ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-14-555

MICHAEL EUGENE REA APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered:** June 17, 2015 APPEAL FROM THE SALINE COUNTY CIRCUIT COURT [NO.63CR-13-39] HONORABLE ROBERT HERZFELD, JUDGE REBRIEFING ORDERED

WAYMOND M. BROWN, Judge

Appellant appeals from his conviction of four counts of computer exploitation of a child—first degree, a Class B felony, and twenty counts of distributing/possessing or viewing matter depicting sexually explicit conduct involving a child—first offense, a Class C felony. Appellant's counsel has filed a no-merit brief and motion to withdraw as counsel, pursuant to *Anders v. California*,[1] and Arkansas Supreme Court Rule 4-3(k),[2] stating that there are no meritorious grounds to support an appeal. The clerk mailed a certified copy of counsel's motion and brief to appellant, informing him of his right to file pro se points for reversal. Appellant availed himself of the opportunity to file pro se points for reversal. However, counsel's no-merit brief includes some deficiencies. Accordingly, we order rebriefing.

[1] 386 U.S. 738 (1967).

[2] (2011).

Under the *Anders* format, a motion to withdraw must be accompanied by an abstract and brief referring to everything in the record that might arguably support an appeal, including all motions, objections, and requests decided adversely to appellant, and a statement of reasons why none of those rulings would be a meritorious ground for reversal.[3] Trial counsel gave numerous grounds for appellant's motion for directed verdict, which he properly renewed. With respect to the twenty counts charging that appellant distributed, possessed, or viewed any matter depicting sexually explicit conduct involving a child, trial counsel argued, that:

1. There was insufficient evidence that appellant knowingly possessed such matter;

2. The State failed to prove the elements of sexually explicit conduct;

3. There was insufficient evidence that the depicted individual in each photograph was a child as defined by statute; and

4. The twenty counts should be reduced to one count because the pictures giving rise to the charges constituted a continuing offense and to prevent violation of double jeopardy.

With respect to the four counts charging appellant with computer exploitation of a child–first degree, trial counsel argued, that:

1. The State failed to prove that there was sexually explicit conduct depicted in each of the four photographs that were relied on; and

2. The four counts should be reduced to one count because the pictures giving rise to the charges constituted a continuing offense and to prevent violation of double jeopardy.

Appellate counsel's brief does not discuss the adverse rulings stemming from each of these grounds.

[3] *Green v. State*, 2009 Ark. App. 519, at 2, 334 S.W.3d 418, 418 (citing Ark. Sup. Ct. R. 4–3(k)).

While appellate counsel generally discusses trial counsel's assertion that the State failed to meet the elements of sexually explicit conduct and that the photographs equated to a continuing course of conduct, he fails to explain the alleged failure as to each charge, as was argued below. The argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal.[4] If counsel fails to address all possible grounds for reversal, this court will deny the motion to withdraw and order rebriefing.[5]

Additionally, appellate counsel's six-page argument section is completely devoid of citation to any authority as to why it would be wholly frivolous to base an appeal on any of the rulings that were adverse to appellant below. Counsel's argument appears to be a regurgitation of the circuit court's reasons for denying appellant's motions, without any legal analysis of why the circuit court was correct in doing so. Accordingly, counsel's brief impermissibly amounts to nothing more than a statement that the appeal has no merit.

We encourage counsel to review Rule 4-2 of the Rules of the Arkansas Supreme Court and Court of Appeals to ensure that his brief complies with the rules and that no additional deficiencies are present.

Rebriefing ordered.

GLADWIN, C.J., and VIRDEN, J., agree.

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[4] *Ashcraft v. State*, 2012 Ark. App. 470, at 2 (citing *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001)).

[5] *Id.* (citing *Sweeney v. State*, 69 Ark. App. 7, 9 S.W.3d 529 (2000)).

Jones Law Firm, by: *F. Parker Jones III*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Rebecca B. Kane*, Ass't Att'y Gen., for appellee.