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ARKANSAS COURT OF APPEALS
DIVISION I
No. CR-17-215

BEN PERKINS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: January 24, 2018

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. 18CR-14-01]

HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED; MOTION
TO WITHDRAW GRANTED

RAYMOND R. ABRAMSON, Judge

The Benton County Circuit Court revoked Ben Perkins's probation and sentenced him to twenty-four months' imprisonment and sixty months' suspended imposition of sentence. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) of the Rules of the Arkansas Supreme Court and Court of Appeals, Perkins's attorney has filed a no-merit brief along with a motion to withdraw, asserting that there is no issue of arguable merit for an appeal. Perkins was notified via certified mail of his right to file pro se points for reversal, but he has not done so. We affirm the revocation and grant counsel's motion to withdraw.

On October 31, 2014, Perkins pled guilty to residential burglary, and the court sentenced him to eighty-four months' probation. The terms and conditions of his

probation included that he shall live a law-abiding life, be of good behavior, and not violate any state, federal or municipal law; shall pay fines, court costs, and restitution; shall promptly notify his probation officer of any change of address or employment; and shall cooperate with his probation officer and report to her as directed.

On August 3, 2016, the State filed a petition for revocation of Perkins's probation. It alleged that Perkins had failed to pay fines, costs, and fees; failed to report to his probation officer; failed to pay probation fees; failed to notify his probation officer of his current address and employment; failed to live a law-abiding life, be of good behavior, and not violate any state, federal, or municipal law; and committed first-degree battery on May 29, 2016. The court held a revocation hearing on December 12, 2016.

At the hearing, the State informed the court that it wanted to dismiss the first-degree-battery allegation because the witness failed to appear for the hearing. April Thomas then testified that she is Perkins's probation officer and that Perkins is required to report to her monthly but that since November 17, 2015, Perkins had reported only one time on January 25, 2016. She further stated that he had informed her that he lived at 265 Winchell Circle, but when she visited that address in May 2016, the residence was vacant. Thomas also testified that Perkins had not paid any probation fees and that he tested positive for marijuana on January 25, 2016. Anitra Thompson, an employee of the Crittenden County Sheriff's office, testified that Perkins had not made any payments on his fines, fees, or restitution and that he owed \$1,110.

Kirsheena Cannady, Perkins's mother, testified that Perkins turned eighteen on May 28, 2016, and that he has been living with her since November 2015. She stated that she did not know he was on probation until recently and that she did not receive any notification that he had not been making the required payments. She further stated that she could pay his fines and costs for him.

Perkins testified that he did not make payments because he did not understand that he was required to make payments. He thought his mother would make the payments. He further testified that he is dependent on his mother for transportation and that he did not know he was required to report to his probation officer monthly. He explained that he went to jail in July 2016 for a first-degree-battery charge and that he had been in jail until about two weeks before the hearing. He also admitted smoking marijuana. He stated that now that he is eighteen years old, he would start making the required payments and that he would report to his probation officer.

At the conclusion of the hearing, the court revoked Perkins's probation and sentenced him to twenty-four months' imprisonment followed by sixty months' suspended imposition of sentence. The court found that Perkins had violated his probation by (1) inexcusably failing to pay fines and costs; (2) failing to live a law-abiding life by testing positive on a January 25, 2016 drug screen; (3) inexcusably failing to report to his probation officer; and (4) inexcusably failing to provide his probation officer with his current address.

On appeal of a revocation, we review whether the circuit court's findings are clearly against the preponderance of the evidence. *Jones v. State*, 2013 Ark. App. 466. To revoke probation, the State has the burden of proving by a preponderance of the evidence that a condition of probation was violated. *Id.* Evidence that is insufficient to support a criminal conviction may be sufficient to support a revocation. *Joiner v. State*, 2012 Ark. App. 380. Proof of just one violation of the terms and conditions of release is sufficient to support revocation. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004).

Perkins's counsel argues that there are no meritorious grounds for appeal and asks to withdraw as counsel. A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief that contains a list of all rulings adverse to appellant and an explanation as to why each ruling is not a meritorious ground for reversal. Ark. Sup. Ct. R. 4-3(k)(1). The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions, and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. *Id.* In deciding whether to allow counsel to withdraw from appellate representation, the test is not whether counsel thinks the circuit court committed no reversible error, but whether the points to be raised on appeal would be wholly frivolous. *Williams v. State*, 2013 Ark. App. 323.

In this case, counsel asserts that the circuit court was correct in its ruling that Perkins was in violation of the terms of his probation. We agree; the circuit court heard

sufficient evidence to find by a preponderance of the evidence that Perkins had violated his probation by testing positive for marijuana on January 25, 2016.¹

Counsel abstracts and discusses two evidentiary rulings that were adverse to Perkins,² and counsel argues that these adverse rulings are not meritorious grounds for reversal. We agree. The first adverse ruling concerns the State's question to Perkins's mother whether the first-degree-battery allegations against her son are true, and the second adverse ruling concerns the State's question to Perkins why the first-degree-battery victim failed to appear for the hearing. Perkins's trial counsel objected to the State's questions, and the circuit court overruled his objections.

A circuit court has broad discretion in evidentiary rulings, and this court will not reverse a circuit court's ruling on the introduction of evidence unless the lower court has abused that discretion. *Williams v. State*, 2011 Ark. App. 675, 386 S.W.3d 609. Moreover, even when a circuit court errs in admitting evidence, the appellate courts will affirm and deem the error harmless if the evidence of guilt is overwhelming and the error is

¹Counsel states incorrectly that an appeal of the sufficiency of the evidence would not be meritorious because Perkins's trial counsel failed to renew his directed-verdict motion at the close of all the evidence. Our supreme court has held that a challenge to the sufficiency of the evidence may be raised for the first time in an appeal of a revocation in the absence of a motion for a directed verdict. *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001). However, counsel's misstatement does not warrant rebriefing because counsel further explains why the evidence is sufficient to support the revocation. Counsel also incorrectly cites the standard of review for a conviction alongside the standard for a revocation. Again, we find rebriefing unwarranted.

²Counsel discusses three additional evidentiary objections made by Perkins; however, Perkins did not receive adverse rulings on those objections. Specifically, Perkins failed to obtain a ruling on one objection, the court sustained one objection, and the State rephrased its questioning on the other objection.

slight. *Marmolejo v. State*, 102 Ark. App. 264, 284 S.W.3d 78 (2008). And it is presumed that a circuit court in a bench trial will consider only relevant evidence. *Marshall v. State*, 342 Ark. 172, 27 S.W.3d 392 (2000). Accordingly, we agree with counsel that an appeal based on the evidentiary rulings would be wholly frivolous.

Therefore, we find compliance with Rule 4-3(k)(1) and *Anders* and hold that there is no merit to this appeal. We grant counsel's motion to withdraw, and we affirm the circuit court's order of revocation.

Affirmed; motion to withdraw granted.

GRUBER, C.J., and KLAPPENBACH, J., agree.

S. Butler Bernard, Jr., for appellant.

One brief only.