

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-17-226

RESHORD DEMONE RILEY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered January 24, 2018

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. 46CR-12-81]

HONORABLE BRENT HALTOM,
JUDGE

SUPPLEMENTATION OF RECORD
AND REBRIEFING ORDERED;
MOTION TO WITHDRAW DENIED

N. MARK KLAPPENBACH, Judge

In August 2015, Reshord Riley’s probation on his conviction for breaking or entering was revoked and extended for two years. The State filed another petition for revocation in November 2016, alleging that Riley had violated his probation by committing a new offense, testing positive for alcohol, and failing to pay financial obligations as ordered. After a hearing, the Miller County Circuit Court revoked Riley’s probation due to his failure to pay as ordered and sentenced him to six years’ imprisonment.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals, Riley’s counsel has filed a motion to withdraw on the ground that this appeal is wholly without merit. Rule 4-3(k)(1) requires this motion to be accompanied by a brief that contains an argument section that lists all rulings adverse to the appellant made by the circuit court with an explanation as to why each

adverse ruling is not a meritorious ground for reversal. Because counsel has not fulfilled his obligations under the rule, we must order rebriefing and supplementation of the record.

Counsel correctly notes that there were no objections raised at the revocation hearing that resulted in adverse rulings. However, he fails to note that the decision to revoke is an adverse ruling that must be addressed by counsel in an *Anders* brief. *Seay v. State*, 2010 Ark. App. 36. The requirements of Arkansas Rule of Criminal Procedure 33.1, that a defendant must move for a dismissal to preserve the issue of sufficiency of the evidence, do not apply to revocation hearings. *Id.* Because counsel has failed to discuss the revocation decision and explain why the ruling does not constitute a meritorious ground for reversal, we must order rebriefing. *See Williams v. State*, 2013 Ark. App. 323.

We must also order rebriefing due to documents omitted from the addendum. Arkansas Supreme Court Rule 4-2(a)(8)(A) requires that the addendum contain all relevant pleadings, orders, and exhibits in the record that are essential for the appellate court to understand the case and to decide the issues on appeal. We have held that the terms and conditions of probation are essential to our review in determining whether those conditions had been violated. *Sims v. State*, 2015 Ark. App. 11. Here, the conditions of Riley's probation were admitted into evidence as an exhibit at the revocation hearing, but counsel has failed to include them in the addendum.

Finally, we must also order that the record and addendum be supplemented with Riley's original conviction for breaking or entering, as well as subsequent orders revoking and extending his probation for that offense. The 2015 sentencing order and conditions of

probation state that Riley must pay all of his previously assessed financial obligations, but the record does not contain the orders assessing these obligations. If anything material to either party is omitted from the record by error or accident, we may direct that the omission be corrected, and if necessary, that a supplemental record be certified and transmitted. Ark. R. App. P.–Civ. 6(e) (made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a)).

Because of the deficiency in the record, we remand to the circuit court to settle and supplement the record with the necessary documents. Upon filing the supplemental record, counsel shall have thirty days in which to file a substituted brief that complies with our rules. We express no opinion as to whether the new brief should be made pursuant to Rule 4-3(k)(1) or should be on meritorious grounds. If a no-merit brief is filed, counsel's motion and brief will be forwarded by our clerk to Riley so that, within thirty days, he again will have the opportunity to raise any points he so chooses in accordance with Rule 4-3(k)(2).

Supplementation of record and rebriefing ordered; motion to withdraw denied.

GRUBER, C.J., and ABRAMSON, J., agree.

Joseph C. Self, for appellant.

One brief only.