

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-17-277

DON MICHAEL COX

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 20, 2018

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIRST
DIVISION [NO. 60CR-14-2219]

HONORABLE LEON JOHNSON,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

PHILLIP T. WHITEAKER, Judge

Appellant Don Michael Cox was charged with ten counts of distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child. He ultimately pled guilty to all ten counts without a sentencing recommendation from the State. After a sentencing hearing, he was sentenced by a jury to a total of twelve years in the Arkansas Department of Correction and fined \$8,000. Cox appeals the sentencing order.¹

Cox's counsel has now filed a motion to be relieved as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k) (2017), alleging that this appeal is without merit. Counsel also filed an accompanying no-merit brief containing an abstract and addendum of the proceedings below. In the brief, counsel includes

¹Cox filed an untimely pro se notice of appeal from the sentencing order; however, because our supreme court granted Cox's motion for belated appeal, we have jurisdiction over this matter.

all potentially adverse decisions affecting Cox and explains in the argument portion of his brief why there is nothing in the record that would arguably support an appeal. The clerk mailed a certified copy of counsel's motion and brief to Cox, informing him of his right to file pro se points for reversal, and he has done so.

As a general rule, a defendant has no right to appeal from a plea of guilty. Ark. R. App. P.–Crim. 1(a) (2017). A defendant may appeal from a guilty plea under three limited exceptions: (1) a conditional guilty plea under certain specified circumstances pursuant to Arkansas Rule of Criminal Procedure 24.3(b); (2) where the assignment of error is from a sentence or sentencing procedure that was not an integral part of the acceptance of the plea, *see Burgess v. State*, 2016 Ark. 175, 490 S.W.3d 645; and (3) an appeal from a guilty plea when the issue on appeal is one of evidentiary errors that arose after the plea but during the sentencing phase of the trial, regardless of whether a jury was impaneled or the trial judge sat as the trier of fact during that phase. *Johnson v. State*, 2010 Ark. 63; *King v. State*, 2013 Ark. App. 342. Cox did not enter a conditional plea; therefore, he can only appeal from an error arising from sentencing.

The test for filing a no-merit brief is not whether there is any reversible error; rather, it is whether an appeal would be wholly frivolous. *Kindle v. State*, 2015 Ark. App. 13; *Gaines v. State*, 2014 Ark. App. 651. We have reviewed the entire record and are satisfied that there were no adverse evidentiary rulings made during the sentencing hearing. The sentence imposed by the court did not exceed the maximum sentence allowed by law; was within the court's authority and discretion to impose; and was therefore not illegal. *See Easley v. State*,

2017 Ark. App. 317, 524 S.W.3d 412. We have also considered Cox's pro se points for reversal in which he alleges ineffective assistance of counsel, challenges the voluntariness of both his plea and his confession, and asserts his innocence, claiming the computer and images found thereon belonged to a neighboring coworker. From our review of the record and the brief presented to us, including consideration of Cox's pro se points for reversal, which are either not preserved for appeal or do not otherwise support reversal, we find compliance with Rule 4-3(k) and that there is no merit to an appeal. We therefore grant counsel's motion to withdraw and affirm the convictions.

Affirmed; motion to withdraw granted.

GLADWIN and GLOVER, JJ., agree.

Stuart Vess, for appellant.

Leslie Rutledge, Att'y Gen., by: *Jacob H. Jones*, Ass't Att'y Gen., for appellee.