

Cite as 2018 Ark. App. 579

ARKANSAS COURT OF APPEALS

DIVISION I

No. CR-18-26

ALIM SHAKIR HAKIM

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: November 28, 2018

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. 66FCR-17-376]

HONORABLE J. MICHAEL FITZHUGH,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

Alim Shakir Hakim was convicted by a Sebastian County jury of one count of delivery of cocaine and sentenced as a habitual offender to twenty-five years' imprisonment with an additional five years' suspended sentence. Pursuant to *Anders v. California*,¹ and Rule 4-3(k) of the Rules of the Supreme Court and Court of Appeals, Hakim's counsel has filed a motion to withdraw on the ground that this appeal is wholly without merit. The motion is accompanied by an abstract and addendum of the proceedings below, which addresses all objections and motions decided adversely to Hakim, and a brief in which counsel purportedly explains why there is nothing in the record that would support an

¹386 U.S. 738 (1967).

appeal. The clerk of this court provided Hakim with a copy of his counsel's brief and notified him of his right to file pro se points for reversal, but he has not done so. We affirm and grant counsel's motion to withdraw.²

On March 27, 2017, Hakim was charged by criminal information with delivery of cocaine and as a habitual offender. At trial, Hakim's counsel made the following statement during opening:

Jury trials in criminal cases usually have what we call two phases. A guilt or [innocence] phase and then the sentencing phase. This is going to be easy. We are going to have a sentencing phase because my client made this delivery of drugs, all right. The State will prove he did this, okay. So, basically you are going to be here for you to decide what the punishment is because we consider you to be the conscience of the community.

The State presented testimony of the confidential informant, the narcotics investigator who conducted the controlled buy, as well as a video of the transaction. Hakim did not present a defense and during closing arguments, his counsel stated in pertinent part:

I don't know if you will see another case similar to this one, but basically I have rolled over, my client did this, okay. We ask that you keep an open mind and that open mind to continue through because of the next phase which is the sentencing; that is what we are here for. I am not going to insult your intelligence by arguing that you should find him not guilty, all right. So, like I said, we are just here for the next phase. Thank you.

²This is the second time that case has been before us. We initially denied counsel's motion to withdraw and ordered rebriefing. See *Hakim v. State*, 2018 Ark. App. 378, 553 S.W.3d 200.

The jury returned with a guilty verdict. Hakim was subsequently sentenced to twenty-five years' imprisonment with an additional five years suspended. A timely notice of appeal was filed.

Generally, an attorney's statement is not evidence; however, concessions made by an attorney can bind his client.³ In this case, Hakim's counsel's statements amounted to a judicial confession because there was an admission of guilt as to the delivery of cocaine by Hakim.⁴ As such, the statements bound Hakim. Thus, the jury was only tasked with deciding a proper sentence. Although counsel requested a light sentence of three to ten years, the jury returned the twenty-five-year sentence with an additional five years suspended instead. The trial court ran this sentence consecutive to sentences Hakim had received in other cases; however, Hakim's counsel never made a request that the sentence be run concurrent to the other sentences.

Counsel contends that he has thoroughly examined the record and found no error that would support an appeal. As required by Rule 4-3(k), the reasons that the adverse rulings provide no meritorious grounds for appeal are discussed in the brief. Based on our review of the record and the brief presented, we conclude that there has been compliance with Rule 4-3(k), there are no nonfrivolous issues that support an appeal in this case, and

³*Warren v. Frizell*, 2017 Ark. App. 129, 516 S.W.3d 756.

⁴*See Davis v. State*, 33 Ark. App. 198, 804 S.W.2d 373 (1991) (explaining that a statement amounts to a judicial confession only if there is an admission of guilt as to the commission of a criminal act).

this appeal has no merit. Therefore, we affirm Hakim's conviction and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

GRUBER, C.J., and GLADWIN, J., agree.

David L. Dunagin, for appellant.

One brief only.