

Cite as 2019 Ark. App. 8  
**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CR-17-1031

SHAWN PAUL VAIL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 16, 2019

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT  
[NO. 18CR-15-697]

HONORABLE RALPH WILSON, JR.,  
JUDGE

MOTION TO WITHDRAW DENIED;  
REBRIEFING ORDERED

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**N. MARK KLAPPENBACH, Judge**

Appellant Shawn Paul Vail pleaded guilty in 2015 to the crime of financial identity fraud and received a six-year term of supervised probation. The State filed a petition to revoke in May 2017, alleging six violations of probation. Following a hearing, the Crittenden County Circuit Court revoked Vail's probation and sentenced him accordingly. 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, Vail's attorney has filed a no-merit brief, along with a motion to withdraw as counsel, asserting that there is no issue of arguable merit for an appeal. Vail was notified of his right to file pro se points for reversal, but he has not filed any such points. We hold that appellant's counsel's no-merit brief is not in

compliance with *Anders* and Rule 4-3(k). Therefore, we order rebriefing and deny without prejudice counsel's motion to withdraw.

Rule 4-3(k)(1) requires that the argument section of a no-merit brief contain "a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests . . . with an explanation as to why each . . . is not a meritorious ground for reversal." Generally speaking, if a no-merit brief fails to address all the adverse rulings, it will be sent back for rebriefing. *Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877. The requirement for abstracting and briefing every adverse ruling ensures that the due-process concerns in *Anders* are met and prevents the unnecessary risk of a deficient *Anders* brief resulting in an incorrect decision on counsel's motion to withdraw. *Id.* Pursuant to *Anders*, we are required to determine whether the case is wholly frivolous after a full examination of all the proceedings. *T.S. v. State*, 2017 Ark. App. 578, 534 S.W.3d 160. A no-merit brief in a criminal case that fails to address an adverse ruling does not satisfy the requirements of Rule 4-3(k)(1), and rebriefing will be required. *Jester v. State*, 2018 Ark. App. 360, 553 S.W.3d 198.

Our review of this record demonstrates that counsel failed to address at least one adverse ruling. Counsel adequately addressed the sufficiency of the evidence to support the circuit court's decision to revoke appellant's probation. Counsel also pointed out two evidentiary objections raised during the revocation hearing and explained why those objections did not result in rulings adverse to appellant. Counsel did not, however, address the circuit court's failure to grant appellant's request for a continuance of the

sentencing hearing. Appellant had asked that his sentencing be continued for eleven days so that he could complete the drug-court application process that he had begun two weeks earlier. Appellant clarified that he would “appreciate the opportunity to have the extra eleven days to get this done” before being sentenced. The circuit court did not grant the continuance and sentenced appellant to two years in the community correctional facility “where they have a treatment center” to be followed by three years of suspended imposition of sentence. Counsel failed to explain why this would not be a meritorious ground for reversal on appeal, requiring rebriefing.

Counsel is encouraged to review *Anders, supra*, and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals for the requirements of a no-merit brief. Counsel has fifteen days from the date of this opinion to file a substituted brief that complies with the rules. *See Ark. Sup. Ct. R. 4-2(b)(3)*. After counsel has filed the substituted brief, our clerk will forward counsel’s motion and brief to appellant, and he will have thirty days within which to raise pro se points in accordance with Rule 4-3(k). The State will likewise be given an opportunity to file a responsive brief if pro se points are made.

Motion to withdraw denied; rebriefing ordered.

GRUBER, C.J., and VAUGHT, J., agree.

S. *Butler Bernard, Jr.*, for appellant.

One brief only.