

Cite as 2019 Ark. App. 35  
**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CR-18-219

MAURICE BEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: January 23, 2019

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
FIRST DIVISION [NO. 60CR-16-4557]

HONORABLE LEON JOHNSON,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**KENNETH S. HIXSON, Judge**

Appellant Maurice Bey appeals after the Pulaski County Circuit Court dismissed his appeal from district court. Appellant’s attorney has filed a no-merit brief and a motion to withdraw as counsel pursuant to Arkansas Supreme Court Rule 4-3(k) (2017) and *Anders v. California*, 386 U.S. 738 (1967), asserting that this appeal is wholly without merit. The motion is accompanied by an abstract and addendum of the proceedings below, alleged to include all objections and motions decided adversely to appellant, and a brief in which counsel explains why there is nothing in the record that would support an appeal. The clerk of this court mailed a copy of counsel’s motion and brief to appellant’s last-known address informing him of his right to file pro se points for reversal; however, he has not

done so.<sup>1</sup> Consequently, the attorney general has not filed a brief in response. We grant counsel's motion to withdraw and affirm the dismissal.

Appellant was pulled over by a state trooper on July 14, 2016, and cited for driving with a suspended license and for not wearing a seat belt in violation of Arkansas Code Annotated sections 27-16-303(a) and 27-37-702(a) (Repl. 2014). Appellant pleaded not guilty in the North Little Rock District Court, and a pro se bench trial was held on December 7, 2016. The district court found appellant guilty of each offense and ordered him to pay fines, fees, and court costs totaling \$430.

Appellant alleges that afterward, he told the district clerk he wanted to appeal his convictions, and the district clerk prepared a certified copy of the record, which appellant timely delivered to the clerk of the Pulaski County Circuit Court on December 30, 2016. Additionally, appellant filed a motion to dismiss for lack of probable cause to arrest on June 23, 2017. However, the State moved to dismiss appellant's appeal because he had not "serve[d] a certified copy of the district court record" on the prosecuting attorney or the city attorney, and he had not "file[d] a certificate of service of same with the district court." Appellant opposed the motion, and a hearing was held on the motion to dismiss.

At the hearing, the State orally amended its motion to assert that appellant had failed to file a written request that the district court clerk prepare the record, serve that written request on the prosecuting attorney or the city attorney, and file a certificate of

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<sup>1</sup>The packet was mailed to appellant by certified mail, and a return receipt indicates that delivery was accepted.

such service with the district court. Appellant's counsel conceded that appellant had not filed that written request and that this court's opinion in *Fewell v. State*, 2014 Ark. App. 631, required him to do so. Nevertheless, counsel argued that *Fewell* was wrongly decided and should be overruled for two reasons. He first argued that the written-request provision does not apply to every defendant appealing from a district court conviction; and second, he argued that even if it did, it is a procedural rule and not a jurisdictional one.

The circuit court granted the State's motion for dismissal and entered orders of dismissal on December 11, 2017, and January 23, 2018.

This is a misdemeanor appeal from two district-court convictions. Defendant timely filed a certified copy of the district-court record with the Clerk of the Pulaski County Circuit Court. See Ark. R. Crim. P. 36(b)-(c). But Defendant did not file with the district-court clerk a request that the clerk prepare a certified copy of the record; did not serve a copy of that request upon the Prosecuting Attorney for the Sixth Judicial District; and did not file with the district-court clerk a certificate of that service. See Ark. R. Crim. P. 36(c). The State is correct that these failures are fatal to Defendant's appeal. See *Fewell v. State*, 2014 Ark. App. 631. Defendant's arguments to the contrary are overruled.

WHEREFORE, the Court GRANTS the State's motion, DISMISSES Defendant's appeal, and REMANDS this case to the North Little Rock District Court, Second Division.

This appeal followed.

Appellant's counsel correctly explains that this appeal is wholly without merit in light of *Jones v. State*, 2018 Ark. App. 211.<sup>2</sup> In *Jones*, as here, the State filed a motion to

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<sup>2</sup>Counsel had previously filed a motion to stay briefing in this case until the mandate in *Jones, supra*, had issued, which we granted.

dismiss an appeal from district to circuit court after Jones had failed to comply with the requirements of Arkansas Rule of Criminal Procedure 36(c), which provides the following:

**(c) How Taken.** An appeal from a district court to circuit court shall be taken by filing with the clerk of the circuit court a certified record of the proceedings in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. The record of proceedings in the district court shall include, at a minimum, a copy of the district court docket sheet and any bond or other security filed by the defendant to guarantee the defendant's appearance before the circuit court. *It shall be the duty of the clerk of the district court to prepare and certify such record when the defendant files a written request to that effect with the clerk of the district court and pays any fees of the district court authorized by law therefor. The defendant shall serve a copy of the written request on the prosecuting attorney for the judicial district and shall file a certificate of such service with the district court. The defendant shall have the responsibility of filing the certified record in the office of the circuit clerk.* Except as otherwise provided in subsection (d) of this rule, the circuit court shall acquire jurisdiction of the appeal upon the filing of the certified record in the office of the circuit clerk.

(Emphasis added.) We further rejected the same arguments against dismissal that appellant made here in circuit court: (1) the written-request requirement does not apply to a defendant who has timely filed the record with the circuit court, and (2) the written-request requirement in Arkansas Rule of Criminal Procedure 36(c) is procedural and should not be strictly construed. *Jones, supra; see also Fewell, supra.* Thus, from our review of the record and the brief presented, we find that counsel has complied with the requirements of Rule 4-3(k) and hold that there is no merit to this appeal. Accordingly, counsel's motion to withdraw is granted, and the circuit court's decision to dismiss appellant's appeal from district court is affirmed.

Affirmed; motion to withdraw granted.

HARRISON and MURPHY, JJ., agree.

*William R. Simpson, Jr.*, Public Defender, by: *Andrew Thornton*, Of Counsel, for  
appellant.