

Cite as 2020 Ark. App. 28  
**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CR-18-850

TIMOTHY LEE MILLER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: January 15, 2020

APPEAL FROM THE ASHLEY  
COUNTY CIRCUIT COURT  
[NO. 02CR-17-195]

HONORABLE SAM POPE, JUDGE

AFFIRMED AS MODIFIED; MOTION  
TO WITHDRAW GRANTED

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**MIKE MURPHY, Judge**

At a jury trial, appellant Timothy Miller was convicted of three counts of delivery of methamphetamine within 1000 feet of a school (two for less than two grams, one for more than two grams but less than ten grams), use of a communication device in commission of a drug offense, and fleeing. Miller was sentenced to fifty years in the Arkansas Department of Correction.

In this no-merit appeal, Miller's appellate attorney has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k)(1) (2019), seeking to withdraw as counsel on the basis that there is no merit to an appeal.

On April 3, 2019, Miller filed pro se points pursuant to Rule 4-3(k)(2), alleging ten points for reversal. Those points include challenges to the sufficiency of the evidence and

arguments regarding double jeopardy, ineffective assistance of counsel, due process, and evidentiary rulings. The State has filed a brief in response to each of Miller's points as required by Rule 4-3(k)(3). We affirm as modified and grant counsel's motion to withdraw.

A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and addendum. Ark. Sup. Ct. R. 4-3(k)(1); *Furo v. State*, 2018 Ark. App. 23, at 2. The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions, and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. *Furo*, 2018 Ark. App. 23, at 2. This framework ensures that indigents are afforded their constitutional rights. *Id.* In furtherance of the goal of protecting these constitutional rights, it is the duty of both counsel and this court to perform a full examination of the proceedings and decide if an appeal would be wholly frivolous. *Id.*

In compliance with the directives in *Anders* and Rule 4-3(k)(1), counsel for Miller contends that he has thoroughly examined the circuit court record of this proceeding and found no error that would support an appeal. As required by Rule 4-3(k), the reasons the adverse rulings provide no meritorious grounds for appeal are discussed in the brief.

The first of these adverse rulings are the denials of the motions for directed verdict regarding each of the charges.

It is unlawful for a person to deliver methamphetamine. Ark. Code Ann. § 5-64-422(a) (Repl. 2016). Delivery of less than two grams by aggregate weight, including an

adulterant or diluent, is a Class C felony; delivery of two grams or more, but less than ten grams, is a Class B felony. Ark. Code Ann. § 5-64-422(b)(1) & (2) (Repl. 2016). Under Arkansas Code Annotated section 5-64-411(a), a person is subject to an enhanced sentence of an additional term of imprisonment of ten years if such a drug delivery is committed on or within 1,000 feet of the real property of a school. It is further unlawful that a person use a communication device in the commission of a drug offense. Ark. Code Ann. § 5-64-404. Finally, fleeing on foot is a Class C misdemeanor. Ark. Code Ann. § 5-54-125.

The evidence at trial was as follows. Deputy Tad Huntsman of the Ashley County Sheriff's Office testified that on October 18, 2017, he was working as an undercover officer in the Crossett area with an informant who said he could purchase drugs from Miller. The informant called Miller and arranged to purchase half a gram of methamphetamine. The informant had the call on speaker, and Huntsman listened. The parties all agreed to meet at Sixth and Arkansas Streets in Crossett in a lot across the street from the school that is on the adjacent corner. Huntsman later testified that the distance from the school to where the drug transaction took place is 198 feet.

When they arrived, Miller got into the back seat of the car, handed the informant a baggie of methamphetamine, and took the money the informant handed him. Huntsman took possession of the drugs from the informant at that time and later packaged the methamphetamine and sent it to the state crime laboratory. The next day, Huntsman and the informant again called Miller, this time seeking to purchase half a gram of methamphetamine. They all met in the same place as the day before, and Miller again got

into the back seat of the car, gave the informant a baggie of methamphetamine, and Huntsman gave Miller money in exchange.

At that point, Miller asked them to take him to a tobacco store. Huntsman drove him there, and the informant went into the store. While the informant was inside, Huntsman asked Miller if he could get a larger amount of methamphetamine for him, and Miller said that he could. Miller gave Huntsman his phone number, and after the informant returned to the car, they drove back to where they had picked Miller up. Huntsman sent the drugs from this transaction to the state crime lab.

Huntsman then testified that on October 24, 2017, he called Miller directly and arranged to buy an ounce of methamphetamine. The arranged price for the drugs was \$600, and Huntsman photocopied the money he planned to use in the buy. Those photocopies were admitted into evidence. Huntsman testified that he picked Miller up in the same parking lot where they had previously met. They proceeded to drive to the tobacco store and then to Miller's house. Miller then made a phone call, took the money, went inside his house, and returned with a box containing the drugs. They drove around a little more, returned to the lot at Sixth and Arkansas, and Huntsman dropped Miller off. Miller was arrested later that day, and Huntsman recovered \$200 of the photocopied bills.

Christy Williford, a chemist at the Arkansas State Crime Laboratory, testified that she tested the substances from the transactions with Miller and that the baggies contained .5790 grams, .5881 grams, and 10.0217 grams of methamphetamine, respectively.

Finally, Deputy Jay Griffin testified that he took part in Miller's arrest. He testified that when he told Miller he was under arrest, Miller took off running away from him, made it fifty or sixty yards, and then tripped and fell. Griffin testified that Miller was apprehended without further incident after he had fallen.

On appellate review of the sufficiency of the evidence, we seek to determine whether the verdict is supported by substantial evidence. *Davis v. State*, 2019 Ark. App. 502, at 4. After review, we agree with counsel that substantial evidence supports all of Miller's convictions.

Regarding the additional adverse rulings, two were motions for bond reductions, and the remaining four were evidentiary rulings (respectively: hearsay, leading, laying foundation, and an argumentative question). We also agree with counsel that none of these rulings support a meritorious ground for reversal. Finally, we note that the sentencing order contains a small error. Specifically, the fleeing count is a Class C misdemeanor, but on the sentencing form, the box for "Class A misdemeanor" is checked. Accordingly, Miller's sentence is modified to reflect that fleeing is a Class C misdemeanor.

Having reviewed the record and the briefs presented, we conclude that there has been compliance with Rule 4-3(k)(1), there are no nonfrivolous issues that support an appeal in this case, and this appeal has no merit. Furthermore, we conclude that there is no merit to Miller's pro se points in that they are either not preserved for appeal or do not support reversal. Consequently, we grant Miller's counsel's motion to withdraw and affirm the convictions as modified.

Affirmed as modified; motion to withdraw granted.

HARRISON and HIXSON, JJ., agree.

*Potts Law Office*, by: *Gary W. Potts*, for appellant.

*Leslie Rutledge*, Att'y Gen., by: *Karen Virginia Wallace*, Ass't Att'y Gen., for appellee.