

Cite as 2023 Ark. App. 85
ARKANSAS COURT OF APPEALS
DIVISIONS III & IV
No. CR-22-23

XAVIER JUWON LACEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 15, 2023

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. 46CR-20-287]

HONORABLE BRENT HALTOM,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

This no-merit appeal stems from the Miller County Circuit Court’s revocation of appellant Xavier Lacey’s probation. Pursuant to *Anders v. California*,¹ and Arkansas Supreme Court Rule 4-3(b), appellant’s counsel has filed a motion to withdraw and a no-merit brief stating there are no meritorious grounds to support an appeal. The clerk of this court mailed a certified copy of counsel’s motion and brief to appellant, informing him of his right to file pro se points for reversal; he has filed pro se points. From our review of the record and the brief presented, we hold that counsel’s brief is in compliance with the directives of *Anders* and Rule 4-3(b)(1) and that there are no issues of arguable merit to support an appeal.

¹386 U.S. 738 (1967).

Accordingly, we affirm the revocation of appellant’s probation and grant counsel’s motion to withdraw.²

On September 21, 2020, appellant pled guilty to one count of breaking or entering and four counts of theft of property (credit or debit card), all Class D felonies. He was sentenced on October 7 to an aggregate term of six years’ probation subject to certain terms and conditions that were set out in writing and signed by appellant. He was also ordered to pay court costs, fines, and fees. The State filed a petition to revoke on March 22, 2021, alleging appellant had violated the terms and conditions of his probation by committing “an offense against the laws of this, or any other State, or the United States” (aggravated assault on a family or household member and misdemeanor fleeing); by failing to abstain from the use of a controlled substance, narcotic drug, or drug paraphernalia (tested positive for marijuana); by failing to report to the supervising officer as directed; by failing to pay his court-ordered financial obligations (no payment has been made, leaving a balance of \$2,875); and by failing to pay the probation-supervision fees as ordered by the court (balance of \$140 as no payment has been made). Following the September 16, 2021 revocation hearing, the circuit court revoked appellant’s probation and sentenced him to consecutive terms of six years’ imprisonment for breaking or entering as well as for two of the theft-of-property charges. He was also sentenced to six years’ suspended imposition of sentence (SIS) for the other two theft-of-property charges.³ This appeal followed.

²This is a companion case to another criminal case, No. 46CR-20-669, which we also hand down today. *See Lacey v. State*, 2023 Ark. App. 87.

³Appellant was also ordered to pay all original financial obligations and was assessed additional court costs and fees.

Probation may be revoked upon a finding by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation.⁴ The State bears the burden of proof but need only prove that the defendant committed one violation of the conditions.⁵ We will not reverse a circuit court's revocation decision unless it is clearly against the preponderance of the evidence.⁶ Here, the circuit court found that appellant had violated the terms and conditions of his probation by committing a new offense (misdemeanor fleeing) for which a certified copy of appellant's guilty plea to the charge was admitted without objection. The circuit court found that appellant was also in violation for testing positive for marijuana and admitting having used it. The court further found that appellant violated the terms and conditions by missing dates and reporting when he wanted to; by paying nothing toward his financial obligations, although he worked, making four hundred dollars a week; and by not paying anything toward his supervision fees. Any of these violations are enough to support the circuit court's revocation of appellant's probation. Accordingly, we affirm.

In addition to revoking appellant's probation, the circuit court made two adverse findings. The first finding came when the circuit court overruled appellant's objection to Officer Josh Sturtevant's testimony regarding how he came in contact with appellant on February 22, 2021, and subsequently arrested appellant for misdemeanor fleeing. Appellant objected because he did not want information concerning the alleged aggravated assault on

⁴*Cook v. State*, 2021 Ark. App. 225.

⁵*Id.*

⁶*Id.*

a household or family member to be admitted without being able to cross-examine his accuser. The State assured the circuit court that it was not trying to elicit specific statements or anything concerning the aggravated assault, and the circuit court overruled the objection. A circuit court has broad discretion in evidentiary rulings, and this court will not reverse a circuit court's ruling on the introduction of evidence unless the lower court has abused that discretion.⁷ Counsel has explained why this ruling could not support a meritorious basis for reversal.

At the conclusion of the hearing, counsel asked the circuit court to be lenient on appellant. The maximum sentence for a Class D felony shall not exceed six years.⁸ Upon revocation, the circuit court sentenced appellant to the maximum time allowed for three of the Class D felonies and placed appellant on six years' SIS for the remaining two charges. This sentence did not exceed the statutory maximum. Therefore, with respect to appellant's request for leniency, there could be no meritorious ground for appeal.

Appellant filed pro se points for reversal. He first contends that after his revocation hearing, the State dropped the aggravated-assault charge against him, and had the charges been dropped before the hearing, his probation would not have been revoked. Next, he claims that he was offered three years for violating his probation (an offer he declined) but was subsequently sentenced to six years at the time of revocation and asks that he be given the initial three years he would have received had he taken the offer. As an alternative, he asks that his prison sentence for this case and another unrelated case be cut in half so that he

⁷*Harris v. State*, 2021 Ark. App. 465, 635 S.W.3d 538.

⁸Ark. Code Ann. § 5-4-401(a)(5) (Repl. 2013).

only has to serve twelve years' imprisonment instead of twenty-four. These arguments lack merit, are not preserved, and lack any factual basis to support a ground for reversal.

From our review of the record and the brief presented, we hold that counsel has complied with the requirements of *Anders* and Rule 4-3 and that any appeal would be wholly without merit. Accordingly, we affirm appellant's revocation and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

ABRAMSON, KLAPPENBACH, and HIXSON, JJ., agree.

HARRISON, C.J., and VIRDEN, J., dissent.

BRANDON J. HARRISON, Chief Judge, dissenting. I dissent from the decision to grant counsel's motion to withdraw for the same reasons I dissented today in *Stanley v. State*, 2023 Ark. App. 89, as this record presents the same nonfrivolous illegal-sentence issues.

VIRDEN, J., joins.

Phillip A. McGough, P.A., by: *Phillip A. McGough*, for appellant.

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