

Cite as 2011 Ark. App. 480

**ARKANSAS COURT OF APPEALS**DIVISION II  
No. CACR10-1273

ANDRE BAKER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** JUNE 29, 2011APPEAL FROM THE SALINE  
COUNTY CIRCUIT COURT,  
[NO. CR-07-624-2]HONORABLE GARY ARNOLD,  
JUDGEAFFIRMED; MOTION TO  
WITHDRAW GRANTED**CLIFF HOOFFMAN, Judge**

Appellant Andre Baker was convicted of driving while intoxicated-fifth offense and failure to appear. He was sentenced to ten years' imprisonment and fined \$5000. His counsel has filed a no-merit brief, and Baker has filed pro se points for reversal. We affirm and grant counsel's motion to withdraw.

Baker was arrested at a sobriety checkpoint on May 26, 2007, in Saline County. He was ordered to appear before the Saline County District Court on August 7, 2007, but he failed to appear. A jury trial was eventually held in Saline County Circuit Court on August 26, 2010. The State presented the testimony of former Benton police officer Derek McGuire, who testified to administering field sobriety tests to Baker and arresting him. Officer Robert Shell testified that Baker registered a .08 reading on the BAC breath machine.

Cite as 2011 Ark. App. 480

Cheryl Spade, the Saline County District Court Chief Deputy Clerk, testified that Baker was ordered to appear in district court on August 7, 2007. Spade testified that a docket sheet indicated that the judge entered a failure to appear with no bond for a warrant. The defense did not cross-examine any witnesses nor put on any evidence or witnesses. The jury returned verdicts of guilty for both DWI and failure to appear. In the sentencing phase of the trial, the State introduced certified copies of the judgments of Baker's four previous DWI convictions. Baker testified on his own behalf, and his grandmother and cousin testified for him also. On the DWI conviction, the court sentenced Baker to ten years' imprisonment and a fine of \$2500. The court fined Baker \$2500 for the failure-to-appear conviction.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) (2011) of the Rules of the Arkansas Supreme Court and Court of Appeals, Baker's counsel has filed a no-merit brief and a motion to withdraw. We note, however, that counsel's motion to withdraw fails to "contain a statement of the reason for the request" as required by Rule 4-3(k)(1). Counsel's motion states as follows:

That appointed counsel for the appellant has filed a brief in this matter; that all that is required to be done has been done and counsel requests that he be relieved as counsel of record.

In other contexts, we would deny a motion where counsel states no facts to support his motion. See *Ewells v. State*, 2009 Ark. App. 520, 334 S.W.3d 876 (2009). Although we find counsel's motion to be inadequate, we do not deny it here as we are affirming appellant's conviction.

Cite as 2011 Ark. App. 480

Counsel's brief includes an abstract and addendum of the proceedings below, and counsel claims that there were no adverse rulings against Baker which could be the basis of a meritorious appeal. The clerk of this court provided appellant with a copy of his counsel's brief and notified him of his right to file a pro se statement of points for reversal within thirty days. He filed several pro se points, and as a consequence, the State Attorney General filed a brief in response, as required by Arkansas Supreme Court Rule 4-3(k), in which it concurs that appellant's appeal is without merit.

As this is a no-merit appeal, counsel is required to list each ruling adverse to the defendant and to explain why each adverse ruling does not present a meritorious ground for reversal. *See Anders, supra*; Ark. Sup. Ct. R. 4-3(k)(1); *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). The test is not whether counsel thinks the circuit court committed no reversible error, but whether the points to be raised on appeal would be wholly frivolous. *Anders, supra*; *Eads, supra*. Pursuant to *Anders*, we are required to make a determination of whether the case is wholly frivolous after a full examination of all the proceedings. *Id.*

Appellant's attorney argues that there were no objections or rulings adverse to appellant in the jury trial other than the jury verdicts of guilty and the sentencing. Normally, counsel would explain why there would be no merit to a sufficiency argument. Here, counsel does not address the sufficiency of the evidence or alert us to the fact that a sufficiency argument is not preserved. Counsel, who represented Baker at trial, failed to move for a directed verdict; therefore, the sufficiency of the evidence is not preserved. *See*

Cite as 2011 Ark. App. 480

Ark. R. Crim. P. 33.1(c) (2010). We agree that there are no other adverse rulings which could be meritorious grounds for reversal.

Baker's pro se points amount to a claim of ineffective assistance of counsel. As Baker's complaints about his counsel's performance were not presented to the trial court, we cannot now consider his claim for the first time on direct appeal. *VanOven v. State*, 2011 Ark. App. 46, \_\_\_ S.W.3d \_\_\_. Baker is not without a remedy, however, as he may raise an ineffective-assistance-of-counsel claim pursuant to Rule 37 of the Arkansas Rules of Criminal Procedure.

Affirmed; motion to withdraw granted.

WYNNE and MARTIN, JJ., agree.