

Cite as 2010 Ark. App. 742

ARKANSAS COURT OF APPEALSDIVISION II
No. CACR 09-345

DANIEL DORSEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 3, 2010APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-98-365]HONORABLE CHARLES DAVID
BURNETT, JUDGEREBRIEFING ORDERED;
MOTION TO WITHDRAW DENIED**COURTNEY HUDSON HENRY, Judge**

The Crittenden County Circuit Court found that appellant Daniel Dorsey violated the terms and conditions of his suspended imposition of sentence and sentenced him to ten years' imprisonment in the Arkansas Department of Correction. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k)(1), appellant's counsel submitted a no-merit brief asserting that there is no non-frivolous argument to be made in support of an 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 list of pro se points on appeal within thirty days. Pursuant to Arkansas Supreme Court Rule 4-3(k)(2), appellant filed a brief raising pro se points, and the State responded, pursuant to Arkansas Supreme Court Rule 4-3(k)(3). However, we are

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unable to consider the no-merit appeal at this time because appellant's brief is not in compliance with Arkansas Supreme Court Rule 4-2(a) or Rule 4-3(k)(1).

Based upon the record presently before us, we discern the following facts. On July 7, 1998, the Crittenden County Circuit Court found appellant guilty of possession of a controlled substance with intent to deliver and sentenced him to ten years' suspended imposition of sentence. In March 2007, appellant allegedly sold and delivered crack cocaine to an undercover police officer on three separate occasions. The State subsequently filed a petition for revocation, alleging that appellant failed to pay fines, costs, and fees as directed; failed to notify the sheriff of his current address and employment; and sold cocaine to an undercover police officer on March 5, March 6, and March 12, 2007. On August 26, 2008, the circuit court held a revocation hearing, found that appellant violated the terms of his suspended sentence, and sentenced him to ten years' imprisonment in the Arkansas Department of Correction. Appellant timely filed a notice of appeal.

Before reaching appellant's arguments, we consider whether appellant submitted a brief with a proper addendum in compliance with Arkansas Supreme Court Rule 4-2(a)(8). This court has stated that the record on appeal is limited to what is included in the briefs and the abstract, and the burden is on the appellant to provide an abstract and addendum that complies with Rule 4-2. *See Anderson v. Holliday*, 65 Ark. App. 165, 986 S.W.2d 116 (1999). Arkansas Supreme Court Rule 4-2(a)(8)(A) requires the addendum to include "the order, judgment, decree, ruling, letter opinion, or administrative agency decision from which the appeal is

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taken.” Arkansas Supreme Court Rule 4-2(b)(3) explains the procedure to be followed when an appellant has failed to supply this court with a sufficient brief, providing:

Whether or not the appellee has called attention to deficiencies in the appellant’s abstract or addendum, the court may address the question at any time. If the court finds the abstract or addendum to be deficient such that the court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, addendum, and brief, at his or her own expense, to conform to Rule 4-2(a)(5) and (8). Mere modifications of the original brief by the appellant, as by interlineation, will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement the brief, at the expense of the appellant or the appellant’s counsel, as the court may direct. If after the opportunity to cure the deficiencies, the appellant fails to file a complying abstract, addendum and brief within the prescribed time, the judgment or decree may be affirmed for noncompliance with the rule.

In the present case, appellant’s counsel included in the addendum only one page of the 1998 judgment and commitment order. Further, appellant failed to include the entire September 5, 2008 judgment and commitment order convicting him of possession of a controlled substance with intent to sell or deliver. In its place, appellant merely copied the bench ruling from the August 26, 2008 revocation hearing. For these reasons, we order rebriefing to include these relevant pleadings and any additional documents necessary on appeal.

Further, we note that appellant’s counsel failed to abstract any objections subject to our review. Arkansas Supreme Court Rule 4-3(k)(1) requires that “the abstract and Addendum of the brief shall contain . . . all rulings adverse to the defendant. . . .” *Id.* We cannot affirm an appellant’s conviction and allow an attorney to withdraw without adequate discussion as

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to why a particular ruling by the trial court should not be meritorious grounds for reversal. *Brady v. State*, 346 Ark. 298, 57 S.W.3d 691 (2001); *Mitchell v. State*, 327 Ark. 285, 938 S.W.2d 814 (1997). A no-merit brief that fails to address an adverse ruling does not satisfy the requirements of Rule 4-3(k)(1) and must be rebriefed. *Sartin v. State*, 2010 Ark. 16, ____ S.W.3d _____. Thus, we order rebriefing because of appellant's noncompliance with Arkansas Supreme Court Rules 4-2 and 4-3. Accordingly, we order appellant to file a substituted brief containing all adverse rulings and a substituted addendum containing all relevant pleadings within fifteen days from the date of entry of this order.

Rebriefing ordered; motion to withdraw denied.

ABRAMSON and BROWN, JJ., agree.