DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

CACR 05-964

June 28, 2006

JAMES RAY BRANDON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY
[NO. CR -2002-68]

HONORABLE HAROLD S. ERWIN, JUDGE

REBRIEFING ORDERED

A judgment and disposition order dated December 8, 2003, reflects that appellant James Ray Brandon was found guilty by a jury of possessing cocaine for which he was placed on probation for four years. On May 23, 2005, the State filed a petition to revoke alleging that appellant had violated the terms of his probation by committing the crime of unlawful discharge of a weapon, by associating with a convicted felon, and by testing positive for marijuana and cocaine. After a hearing, the trial court revoked appellant's probation and sentenced him to a term of five years in prison.

Pursuant to *Anders v. California,* 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw asserting that an appeal from the revocation would be wholly frivolous. This motion was accompanied by a brief purporting to list all adverse rulings and to explain why each ruling is not a meritorious ground for reversal. The appellant was provided a copy of counsel's brief and notified of his right to file a list of points within thirty days. Appellant has chosen not to do so. Because counsel's brief is deficient in several material respects, we order rebriefing.

An attorney's request to withdraw from representation based on a meritless appeal must be

accompanied by a brief that contains an abstract and addendum which include the material parts of the record, and all rulings adverse to the defendant made by the trial court. Ark. Sup. Ct. R. 4-3(j)(1). Counsel's brief is also required to contain an argument section that consists of a list of all adverse rulings with an explanation as to why each adverse ruling is not a meritorious ground for reversal. *Id.* If counsel fails to address all possible grounds for reversal, we can deny the motion to withdraw and order rebriefing. *Sweeney v. State,* 69 Ark. App. 7, 9 S.W.3d 529 (2000).

Although appellant made no argument at the hearing that the State had failed to prove that he had inexcusably violated the conditions of his probation, a defendant in a revocation proceeding is not required to challenge the sufficiency of the State's evidence in order to preserve that issue for appeal. *Barbee v. State,* 346 Ark. 185, 56 S.W.3d 370 (2001). Therefore, the trial court's decision finding sufficient evidence to revoke is an adverse ruling that must be discussed by counsel in his brief. Because counsel failed to do so, we order rebriefing. We also point out that appellant failed to include the petition to revoke in the addendum. Upon rebriefing, counsel is instructed to include the petition in the addendum.

We must also mention the only other adverse ruling made at the hearing. When Officer Donnie Schultz was about to testify as to what he had been told by a woman named Tamika Childress, appellant interjected, saying:

> DEFENSE COUNSEL:Your honor, it's hearsay. It's hearsay exception to the rule. It's a probation revocation but I still object to the testimony. If they could have her here to testify so I could cross-examine her...
>
> THE COURT: Overruled.

With regard to this ruling, counsel in his brief notes that an assertion of hearsay is insufficient to raise the issue of confrontation, citing *Fitzpatrick v. State,* 7 Ark. App. 246, 647 S.W.2d 480 (1983). However, one might argue that the objection raised here is similar to the one made in *Jones v. State,* 31 Ark. App. 23, 786 S.W.2d 851 (1990), where we held that the objection was adequate to raise a confrontation-clause issue. Although the rules of evidence do not strictly apply in revocation proceedings, the right to confrontation does apply. *Goforth v. State,* 27 Ark. App. 150, 767 S.W.2d

537 (1989). Upon rebriefing, counsel is instructed to discuss whether the objection raised was sufficient to preserve a confrontation issue on appeal. If counsel believes that the issue is preserved, counsel is to discuss whether, or not, the adverse ruling presents a wholly frivolous issue for appeal. We do not mean to express any opinion in the matter, but if counsel in his judgment believes that a confrontation-clause issue was preserved and that it is not wholly without merit, then counsel should present a merit brief.

In sum, we deny counsel's motion to withdraw at this time and order rebriefing.

Rebriefing ordered.

VAUGHT and BAKER, JJ., agree.