

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION IV

CACR 06-1468

JUNE 27, 2007

MARCUS D. WITHERS
APPELLANT

APPEAL FROM THE DREW
COUNTY CIRCUIT COURT
[NO. CR-2006-0066-3]

V.

HONORABLE ROBERT BYNUM
GIBSON, JR., JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED; MOTION TO BE
RELIEVED GRANTED

Appellant Marcus D. Withers pleaded guilty to possession of cocaine, a Class C felony. He was sentenced by a jury as a habitual offender to twenty years in prison. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j)(1) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the grounds that the appeal is without merit. Appellant's counsel's motion was accompanied by a brief discussing all matters in the record that might arguably support an appeal, and a statement as to why each point is without merit. Mr. Withers was provided with a copy of his counsel's brief and notified of his right to file a list of pro se points within thirty days, but he has declined to do so.

Subsequent to Mr. Withers's guilty plea, a sentencing hearing was held before a jury. There was no testimony taken, and the jury was given a copy of a judgment and

commitment order showing that Mr. Withers had been convicted of two prior felonies. Arguments to the jury were made by each parties' counsel, and there were no objections made to the trial court.

Generally, there is no right to appeal a guilty plea, except for a conditional plea of guilty premised on the denial of a suppression motion pursuant to Ark. R. Crim. P. 24.3. Ark. R. App. P. - Cr. 1. The supreme court has recognized two exceptions to this general rule: (1) when there is a challenge to testimony or evidence presented before a jury in a sentencing hearing separate from the plea itself; and (2) when the appeal is an appeal of a post-trial motion challenging the validity and legality of the sentence itself. *Seibs v. State*, 357 Ark. 316, 166 S.W.3d 16 (2004).

This was not an appeal from a conditional guilty plea under Rule 24.3, and appellant's counsel correctly asserts that neither of the above exceptions permit a meritorious appeal. There were no challenges presented by the appellant during the sentencing hearing, and there was no post-trial motion challenging the sentence. Moreover, the sentence of twenty years was within the legal sentencing range. Pursuant to Ark. Code Ann. § 5-4-501(a)(2)(D) (Repl. 2006), a defendant who is convicted of a Class C felony, and who has previously been convicted of more than one but fewer than four felonies, shall be sentenced to a term of imprisonment of not less than three nor more than twenty years.

Based on our review of the record and the brief presented to this court, we conclude that there has been full compliance with Rule 4-3(j)(1) and the appeal is without merit.

Consequently, appellant's counsel's motion to be relieved is granted and the judgment is affirmed.

Affirmed.

PITTMAN, C.J., and HEFFLEY, J., agree.