

521

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR06-506

PAUL BARRON, SR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JUNE 25, 2008

APPEAL FROM THE CARROLL COUNTY CIRCUIT COURT, [NO. CACR-2000-124]

HONORABLE ALAN DAVID EPLEY, JUDGE

MOTION TO WITHDRAW DENIED; REBRIEFING ORDERED

ROBERT J. GLADWIN, Judge

Appellant, Paul Barron, was tried by a Carroll County jury and convicted of manufacturing a controlled substance, methamphetamine. His attorney, Mr. Phillip A. Moon, filed a motion to be relieved as counsel, alleging that there are no meritorious issues presented in this appeal. We ordered rebriefing because the abstract and argument portions of counsel's no-merit brief submitted pursuant to Anders v. California, 386 U.S. 738 (1967), failed to comply with the requirements of Anders and Ark. Sup. Ct. R. 4-3(j)(1). Barron v. State, CACR 06-506, op. (Ark. App. Jan. 16, 2008). Before us is counsel's second attempt at complying with the well-established requirements for filing a no-merit brief. Barron was provided a copy of counsel's no-merit brief and notified of his right to file a list of points on

appeal within thirty days. He filed no points. The State did not file a responsive brief due to the absence of pro se points. We must again deny the motion and order rebriefing.

Our standard in determining whether to relieve an attorney from a non-meritorious appeal is not whether counsel thinks the trial court committed no reversible error, but rather whether the points to be raised on appeal would be “wholly frivolous.” *Anders, supra; Ofochebe v. State*, 40 Ark. App. 92, 844 S.W.2d 373 (1992). To be relieved on this basis, an attorney must comply with Rule 4-3(j)(1) of the Rules of the Arkansas Supreme Court and Court of Appeals, which provides that:

Any motion by counsel for a defendant in a criminal or a juvenile delinquency case for permission to withdraw made after notice of appeal has been given shall be addressed to the Court, shall contain a statement of the reason for the request and shall be served upon the defendant personally by first-class mail. A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and Addendum. The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The abstract and Addendum of the brief shall contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the trial court.

As we have oftentimes stated, it is imperative that counsel follow the appropriate procedure when filing a motion to withdraw as counsel. *Walton v. State*, 94 Ark. App. 229, 228 S.W.3d 524 (2006). In furtherance of protecting the constitutional rights of an appellant, it is the duty of both counsel and this court to perform a full examination of the proceedings as a whole to determine if an appeal would be wholly frivolous. *Id.*

Although counsel has mentioned twenty-one items in the argument section of the brief, not all of those listed were rulings that were adverse to appellant. There also appear to be

several other motions, requests, and objections made during the proceedings that counsel yet again failed to include and provide an explanation as to why each adverse ruling is not a meritorious ground for reversal. Finally, we note that in the overwhelming majority of issues raised by counsel in the brief, he provided only brief conclusory statements that appellant suffered no prejudice by the circuit court's ruling and cited a case for the proposition that this court will not reverse in the absence of prejudice. While those statements may be accurate, they are insufficient explanations as to why each adverse ruling is not a meritorious ground for reversal. The rule contemplates thorough, well-reasoned explanations, supported by statutes or caselaw, for each and every ruling that was adverse to the appellant.

Accordingly, counsel is directed to file a brief on the merits or one that complies with Ark. Sup. Ct. R. 4-3(j)(1). If a no-merit brief is filed, counsel's motion and brief will be forwarded by the Clerk to appellant so that, within thirty days, he again may raise any points he chooses in accordance with Ark. Sup. Ct. R. 4-3(j)(2). Counsel's motion to withdraw is denied, and the case is remanded for rebriefing.

Motion to withdraw denied; rebriefing ordered.

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