

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR07-1058

June 25, 2008

CALVIN EDWARD DONALD
APPELLANT

AN APPEAL FROM FAULKNER
COUNTY CIRCUIT COURT
[No. CR1994-905]

V.

HON. LINDA P. COLLIER, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED; MOTION TO
WITHDRAW IS GRANTED

On June 15, 2007, the Faulkner County Circuit Court revoked the probation of Calvin Edward Donald and sentenced him to ten years' imprisonment. His attorney has filed a motion to withdraw as appellant's counsel. The motion was accompanied by a no-merit brief, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(j), wherein counsel contends that all rulings adverse to his client are abstracted and discussed. Appellant has filed no pro se points for reversal. After reviewing the record, we conclude that an appeal in this case would be wholly without merit. Accordingly, we grant counsel's motion to withdraw and affirm the revocation.

On July 31, 2006, appellant pleaded guilty to two counts of residential burglary and one count of theft of property, for which he received a five-year term of probation. On August 8, 2006, the State filed a motion to revoke appellant's probation, alleging that he had failed to report to his probation officer. The hearing on the State's motion was held on June 13 and 15, 2007. The State's only witness at the hearing was appellant's probation officer,

Brenna Willis, who testified that appellant failed to report for his intake meeting or anytime thereafter.

Appellant testified in his own defense. He stated that he was at Hoover House in Little Rock and that he thought the director of Hoover House would contact his probation officer. He asked the court to allow him to continue his probation, which would allow him to complete treatment at Hoover House.

After appellant's testimony, the court stated its inclination to return appellant to Hoover House. However, both appellant's counsel and the State remarked that probationers were only allowed to be in certain programs and that Hoover House was not one of those programs. The court then decided to continue the case to the following Friday.

When court reconvened, Willis testified that she contacted Hoover House, but it refused to confirm whether appellant had ever stayed at the facility. She also ran an ACIC check, and she discovered that appellant, under the name Quincy Hamilton, had absconded from parole out of Little Rock. At the conclusion of the hearing, the court found that appellant had failed to report to his probation officer, revoked appellant's probation, and sentenced him to a ten-year term in the Arkansas Department of Correction.

An attorney's request to withdraw from appellate representation based upon a meritless appeal must be accompanied by a brief that contains a list of all rulings adverse to his client that were made on any objection, motion, or request made by either party. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). The argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal. *Id.* We are bound to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous. *Campbell v. State*, 74 Ark. App. 277, 47 S.W.3d 915 (2001). If counsel fails to address all possible grounds for reversal, this court can deny the motion to withdraw and order rebriefing. *Sweeney v. State*, 69 Ark. App. 7, 9 S.W.3d 529 (2000).

Appellant made no objections at the hearing. Therefore, the only adverse ruling from the hearing is the decision to revoke appellant's probation. Though appellant made no challenge to the sufficiency of the evidence at the revocation hearing, no motion is necessary to preserve such a challenge. See *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001); *Whitener v. State*, 96 Ark. App. 354, 241 S.W.3d 779 (2006). Accordingly, counsel has presented an argument explaining that the State presented sufficient evidence to support the revocation.

A sentence of probation or a suspended sentence may be revoked when a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002). The State needs only show that the appellant committed one violation to sustain a revocation. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). We give great deference to the trial court in determining the preponderance of the evidence, and we do not reverse the revocation unless the decision is clearly against the preponderance of the evidence. *Williams, supra*; *Richardson, supra*.

The evidence presented at the hearing shows that appellant failed to report to his probation officer. Appellant does not deny failing to appear; he merely offers an excuse for his failure to appear, which the court was free to accept or reject. The trial court had before it sufficient evidence to revoke appellant's probation, and no meritorious argument for reversal could stem from this point.

Affirmed; motion to withdraw is granted.

ROBBINS and VAUGHT, JJ., agree.