ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION III

CACR07-1173

June 25, 2008

ANTHONY WISE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT
[No. CR-2006-140-2-5]

HON. JODI DENNIS, JUDGE

REBRIEFING ORDERED

A jury convicted appellant Anthony Wise of possession of a controlled substance with intent to deliver. He was sentenced as a habitual offender and ordered to serve 240 months' imprisonment in the Arkansas Department of Correction. On appeal, Wise's attorney filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, seeking to withdraw as counsel on the basis that there are no non-frivolous issues that would support an appeal in this case. However, from our review of the record and the brief presented to us, we cannot say that the appeal is wholly without merit.

In this case, the trial court allowed Wise to discharge his trial counsel (immediately before his trial began) and proceed pro se. We are concerned with the adequacy of the trial court's admonition to Wise relating to the perils of proceeding pro se, because it is well-

settled law that a defendant must knowingly and intelligently waive his right to counsel. *Hatfield v. State*, 346 Ark. 319, 57 S.W.3d 696 (2001). The constitutional minimum for determining whether a waiver was knowing and intelligent is that the accused be made sufficiently aware of his right to have counsel present and of the possible consequences of a decision to forego the aid of counsel. *Pierce v. State*, 362 Ark. 491, 209 S.W.3d 364 (2005). Further, "[a] specific warning of the danger and disadvantages of self-representation, or a record showing that the defendant possessed such required knowledge from other sources, is required to establish the validity of a waiver." *Bledsoe v. State*, 337 Ark. 403, 407, 989 S.W.2d 510, 512–13 (1999). A defendant must "be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Faretta v. California*, 422 U.S. 806 (1975).

In *Bledsoe*, our supreme court further clarified the trial court's charge when a defendant attempts to waive representation. The court reversed a conviction for rape where the trial court allowed the defendant to proceed pro se without specifically making him aware of the ramifications of proceeding pro se. *Id.* As in this case, the *Bledsoe* trial court warned the defendant that he would be required to follow all of the rules and procedures of the court and this would most likely be difficult for him given his lack of formal legal education. *Id.* However, as in this case, the *Bledsoe* trial court never explained to the defendant the consequences of failing to comply with the rules, such as the inability to secure the admission or exclusion of evidence or the failure to preserve arguments for appeal, and there was no discussion about the substantive risks of proceeding without counsel. *Id.*

Therefore, considering the precedents of our courts and the facts and circumstances of this case, we cannot say that an appeal would be wholly frivolous. Indeed, we are obligated to consider the issue on its merits. Accordingly, we direct Wise's attorney to file a brief developing an adversarial presentation relating to Wise's waiver of his right to representation and any other issues that counsel may deem appropriate.

Motion to Withdraw as Counsel is denied; Rebriefing Ordered.

ROBBINS and GRIFFEN, JJ., agree.