

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOSEPHINE LINKER HART, JUDGE

DIVISION IV

CACR07-933

SHENARD PHILLIPS

June 25, 2008

APPELLANT

V.

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CR2007-985]

STATE OF ARKANSAS

HON. JOHN W. LANGSTON,  
CIRCUIT JUDGE

APPELLEE

AFFIRMED; MOTION TO BE  
RELIEVED GRANTED

Shenard Phillips pleaded nolo contendere in Pulaski County Circuit Court to possession of a controlled substance with intent to deliver. He was sentenced to 120 months in the Arkansas Department of Correction. 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, Phillips's counsel has filed a motion to withdraw on grounds that the appeal is without merit. The clerk of this court furnished appellant with a copy of his counsel's brief and notified him of his right to file *pro se* points for reversal within thirty days. Phillips availed himself of this opportunity and alleged that his counsel was ineffective.

Phillips's counsel's motion was accompanied by an abstract and brief discussing every adverse ruling in the record that might arguably support an appeal. We find that Phillips's

counsel has complied with Rule 4-3(j). The sole adverse ruling occurred in the sentencing hearing. There, Phillips's counsel disputed the accuracy of the pre-sentence report. However, when pressed by the trial court, which offered to redo the report, Phillips's counsel declined the offer. Accordingly, we conclude that this issue was not preserved for our review, and any brief on the merits would be wholly frivolous. See *Epps v. State*, 100 Ark. App. 344, \_\_\_ S.W.3d \_\_\_ (2007). Regarding the sentence imposed, we note that the trial judge imposed the presumptive sentence, which was well within the range for a Class Y felony, and further, any argument based on the merits of the revocation would be wholly frivolous.

Concerning Phillips's pro se points, his ineffective assistance of counsel claim was not timely raised to the trial court and therefore cannot be considered for the first time on appeal. *Ratchford v. State*, 357 Ark. 27, 159 S.W.3d 304 (2004). Therefore, it cannot support a non-frivolous argument on appeal.

From our review of the record and the briefs presented to us, we find that there was compliance with Rule 4-3(j) and that the appeal is without merit. Accordingly, we grant counsel's motion to withdraw and affirm Phillips's sentence.

Affirmed; motion to withdraw granted.

HEFFLEY and BAKER, JJ., agree.