

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR 11-1233JAMES WILLIAM MORRISON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered AUGUST 29, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. CR-08-576]HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED; MOTION GRANTED

JOHN B. ROBBINS, Judge

Appellant James W. Morrison was found guilty of residential burglary by a jury in April 2010 in Sebastian County Circuit Court. The jury sentenced him to five years of suspended imposition of sentence and one year of probation, which required in part that he pay restitution and costs, perform 240 hours of community service, attend probation for one year, and be of “good behavior.” In August 2011, the State filed a petition to revoke, asserting that appellant failed to report and pay costs as required, failed to advise his probation officer of his current whereabouts, tested positive for marijuana in September 2010, and was charged with possessing marijuana in July 2011. At the hearing, the trial court found that appellant violated the “good behavior” requirement by using and possessing marijuana and violated the requirement that he abide by his probationary obligations. Appellant was sentenced to five years in prison, and a notice of appeal followed the revocation.

Appellant's attorney filed a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k) (2011), along with a motion to be relieved as counsel, asserting that there is no issue of arguable merit in an appeal. 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. Ark. Sup. Ct. R. 4-3(k)(1). 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. Rule 4-3(k)(1). 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 circuit court. Rule 4-3(k)(1). *See also Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). It is imperative that counsel follow the appropriate procedure when filing a motion to withdraw as counsel. *Brown v. State*, 85 Ark. App. 382, 155 S.W.3d 22 (2004). In furtherance of the goal of protecting constitutional rights, it is both the duty of counsel and of this court 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, 279, 47 S.W.3d 915, 917 (2001).

Appellant was provided a copy of the motion and brief by mail and was notified of his right to file pro se points for reversal. Appellant did not file any pro se points. The State elected not to file a brief with our court. After a full examination under the proper standards, we hold that counsel provided a compliant "no merit" brief demonstrating that an appeal

would be wholly without merit, and further, that counsel's motion to be relieved should be granted.

To explain in further detail, the primary adverse ruling was the decision to revoke. In a revocation hearing, the burden is on the State to prove by a preponderance of the evidence that the defendant committed at least one violation of the conditions of probation or suspension. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). We defer to the trial court's decisions regarding credibility, and our appellate review requires that we determine whether the trial court's decision is clearly erroneous or clearly against the preponderance of the evidence. *Miller v. State*, 2011 Ark. App. 554; *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003).

Here, appellant's probation officer testified to appellant's failure to report as well as appellant's positive drug test and current criminal charge of possession of marijuana. Appellant testified, admitting that he had not yet completed his community service obligation, that he failed one drug test, and that he was involved with the marijuana that resulted in criminal charges. He asked for another chance. The trial judge found him in willful violation of his conditions, including the two marijuana-related allegations and the failure to complete his probation requirements. Only one violation was required to support the revocation; here, appellant admitted to violations that the trial court ultimately concluded he committed. There could be no meritorious ground for reversal on the sufficiency of the evidence to revoke. See *Johnson v. State*, 2009 Ark. App. 527, 334 S.W.3d 419.

The only other potentially adverse rulings concerned the admission of testimony regarding his failed drug test, the identification of the substance as marijuana, and hearsay/confrontation clause issues. As to the failed drug test, the trial court instructed the witness to clarify the testing process and his experience in testing, providing a sufficient foundation for this testimony, and appellant admitted to failing that drug test. As to identifying the substance as marijuana, the witness was deemed qualified to offer that opinion, and appellant admitted that he possessed marijuana. Appellant's admissions nullified any potential prejudice in allowing these portions of testimony. As for the alleged hearsay statements attributable to appellant's girlfriend and to his right to confront her about any such statements, no ruling was made. Even so, the prosecutor rephrased the question to avoid drawing out hearsay; the prosecutor directed questions to appellant's personal knowledge instead. No prejudice could result where appellant was afforded appropriate relief. In addition, the rules of evidence are not strictly applicable to revocation proceedings, with certain exceptions not applicable here. *See Caswell v. State*, 63 Ark. App. 59, 973 S.W.2d 832 (1998). No meritorious ground for reversal could be asserted on any of these bases.

Having considered this appeal under the proper standards required for no-merit appeals, we affirm the revocation and grant counsel's motion to be relieved.

Affirmed; motion granted.

VAUGHT, C.J., and ABRAMSON, J., agree.

Kellie M. Emerson, for appellant.

No response.

