SLIP OPINION

Cite as 2013 Ark. App. 310

# ARKANSAS COURT OF APPEALS

DIVISION IV
**No.** CACR11-617

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| DANIEL WEAVER<br>APPELLANT<br><br>V.<br><br>STATE OF ARKANSAS<br>APPELLEE | **Opinion Delivered** May 8, 2013<br><br>APPEAL FROM THE CRAWFORD COUNTY CIRCUIT COURT [CR-2010-439 (II)]<br><br>HONORABLE MICHAEL MEDLOCK, JUDGE<br><br>REBRIEFING ORDERED |

**DAVID M. GLOVER, Judge**

This no-merit appeal returns to us after we ordered rebriefing in *Weaver v. State*, 2012 Ark. App. 446. As we explained in that opinion, appellant, Daniel Weaver, was tried by a jury, found guilty of the offense of rape, and sentenced to twenty-nine years in the Arkansas Department of Correction. His attorney has now filed a second motion to withdraw and another brief purportedly prepared pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals. Weaver has exercised his right to file pro se points for reversal both times. We again return the case to Weaver's counsel for rebriefing because the requirements of *Anders*, *supra*, and our Rule 4-3 have not been satisfied.

In the first attempt to withdraw, counsel's accompanying brief addressed the denial of five motions filed at trial on behalf of Weaver; those denials also served as the basis for Weaver's

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pro se points. However, counsel did not list and address all the adverse rulings in this case, explaining how each such ruling could provide no meritorious grounds for appeal, as required by *Anders*, *supra*, and our Rule 4-3. In our first opinion, we cited as an example that counsel had moved for a directed verdict at the close of the State's case and again at the close of all evidence; that both motions were denied; but, that in his no-merit brief, no mention was made of them and no discussion was provided regarding the sufficiency of the evidence to support the verdict.

In his present attempt at rebriefing, counsel at least mentions the denials of his directed-verdict motions, but he does not set forth the evidence and still has not explained why that evidence is sufficient to support the verdicts. While it might seem clear without explanation that there was sufficient evidence to support this verdict, it is nevertheless counsel's responsibility in a no-merit brief to set forth the evidence that supports the verdict and to demonstrate to us how it is in fact sufficient to support the verdict and provides no basis for a meritorious appeal. Thus, even with respect to the one specific example we earlier provided to counsel of how his first brief did not satisfy the requirements of *Anders* and our Rule 4-3, counsel has still not satisfied those requirements with his rebriefing effort.

Further, in *Weaver*, *supra*, we cautioned counsel that he is obligated in a no-merit brief to list *every* adverse ruling and explain how each ruling could provide no meritorious grounds for appeal. "Every adverse ruling" includes not only original motions that were denied, but also denials of any renewals of motions (for example, trial arguments that evidence presented had opened the door for reconsideration of the original motion). In *Sartin v. State*, 2010 Ark. 16,

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at 1, 362 S.W.3d 877, 878, we certified the following question to our supreme court: "whether a single omission from a no-merit brief necessarily requires rebriefing." The supreme court held that it does. In addition to our noting above that counsel's discussion of the denials of his directed-verdict motions in his second brief was not adequate, we specifically note that our independent review of the record shows that *at least* eight more adverse rulings were omitted and that there may be more.

We earlier cautioned counsel in *Weaver*, *supra*, that our mention of particular adverse rulings that were not addressed in the brief did not in any way mean that there were not other adverse rulings that were omitted or that the record had been adequately abstracted and the addendum properly prepared. We earlier reminded counsel that it was his responsibility to comply with the requirements for submitting a no-merit brief. We earlier cautioned counsel to review thoroughly the *Anders* case and our Rule 4-3 concerning the requirements for submitting a no-merit brief. We now must raise all the aforementioned cautions again for counsel in preparing his third no-merit brief, or a meritorious brief if required.

Rebriefing ordered.

WALMSLEY and WHITEAKER, JJ., agree.

*Van Buskirk Law Firm*, by: *James M. Van Buskirk*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.