Cite as 2012 Ark. App. 402

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-904

	Opinion Delivered June 27, 2012
RANDALL WAYNE REED	APPEAL FROM THE CLEBURNE COUNTY CIRCUIT COURT
APPELLANT	[No. CR-10-58]
V.	HONORABLE JOHN DAN KEMP, JUDGE
STATE OF ARKANSAS	
APPELLEE	AFFIRMED; MOTION GRANTED

LARRY D. VAUGHT, Chief Judge

This is a criminal appeal in which the appellant, Randall Wayne Reed, was charged with the offense of criminal attempt to commit murder in the first degree and terroristic threatening in the first degree. Appellant was found guilty of these offenses and was sentenced to sixty years' imprisonment in the Arkansas Department of Correction.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4–3(k) (2011) of the Rules of the Arkansas Supreme Court and Court of Appeals, counsel for the appellant has filed a motion to be relieved as counsel and a brief stating that there is no merit to the appeal. The State concurs that appellant's counsel has complied with Rule 4–3(k) and that the appeal has no merit. Appellant was notified of his right to file a pro se brief within thirty days. In response, he filed a pro se brief appealing his conviction because (1) he received ineffective

assistance of counsel; (2) the trial court erred in its failure to advise him of his right to file a new-trial motion asserting his ineffective-assistance claims; and (3) the trial court erred by allowing inadmissible hearsay testimony at trial. We affirm the convictions and grant Reed's counsel's motion to withdraw.

Under Rule 4–3(k)(1), a motion to be relieved as counsel based on counsel's belief that the appeal is wholly without merit must be accompanied by a brief. The brief's argument section must list each adverse ruling and explain why none provide a potentially meritorious ground for reversal. Ark. Sup. Ct. R. 4–3(k)(1). The brief's abstract and addendum must cover all the material parts of the record, including each adverse ruling. *Id*. Appellant's counsel must follow the appropriate procedure in these cases because "[t]his framework is a method of ensuring that indigents are afforded their constitutional rights." *Caldwell v. State*, 2009 Ark. App. 526, at 2, 334 S.W.3d 82, 83.

Here, appellant's counsel's brief addresses all of the adverse rulings made at the bench trial and otherwise complies with all of the strictures of Rule 4–3(k) and *Anders*, *supra*. We agree with appellant's counsel's conclusion: an appeal based upon any of these adverse rulings would be wholly frivolous. Appellant's pro se points for reversal are likewise unavailing. His arguments regarding ineffective assistance of counsel and evidentiary errors are not preserved for our review because he failed to raise them below. *Davis v. State*, 368 Ark. 401, 409, 246 S.W.3d 862, 869 (2007). Regarding his claim that the trial court erred in failing to advise him that his ineffective-assistance claims must be raised in a motion for new trial, he relies on Arkansas Rules of Criminal Procedure Rule 36.4, which in the past did require the trial judge

to advise the defendant that a new-trial motion is needed in order to preserve an ineffective-assistance claim. However, "the supreme court subsequently abolished that part of Ark. R. Crim. P. 36.4 . . . and readopted a modified version of Ark. R. Crim. P. 37, effective January 1, 1991." *Looney v. State*, 32 Ark. App. 191, 193 n.1, 798 S.W.2d 454, 453 n.1 (1990). At the time of appellant's conviction, the Arkansas Rule of Criminal Procedure did not require the trial court to advise appellant regarding his ineffective-assistance claims. Ark. R. Crim. P. 37 (2010).

Thus, based on our review of the record for potential error, pursuant to *Anders*, *supra*, and the requirements of Ark. Sup. Ct. Rule 4–3(k), we agree that the appellant's appeal is wholly without merit. Therefore, the convictions are affirmed, and his attorney's motion to withdraw is granted.

Affirmed; motion granted.

ROBBINS and ABRAMSON, JJ., agree.