

SLIP OPINION

Cite as 2012 Ark. App. 386

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-99

CHRISTOPHER B. BURRIS
APPELLANT
V.
STATE OF ARKANSAS
APPELLEE

Opinion Delivered June 13, 2012

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[CR-2009-316-1]

HONORABLE HAMILTON H.
SINGLETON, JUDGE

AFFIRMED; MOTION GRANTED

DAVID M. GLOVER, Judge

Appellant Christopher Burris was found guilty by a Union County jury of aggravated robbery and possession of a firearm by certain persons. Further, due to the use of a firearm during the commission of a felony, his sentences were extended under the firearm-enhancement provision of Arkansas Code Annotated section 16-90-120 to a total of forty-five years in the Arkansas Department of Correction.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals, Burris's counsel has filed a motion to withdraw on the grounds that the appeal is wholly without merit.¹ Counsel's

¹This is the second appeal in this matter. On January 11, 2012, this court denied counsel's motion to withdraw and ordered rebriefing because the verdict forms were not

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motion was accompanied by a brief referring to everything in the record that might arguably support an appeal, including a list of all rulings adverse to Burris made by the trial 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. The clerk of this court furnished Burris with a copy of his counsel's brief and notified him of his right to file pro se points; Burris has filed points.

The only adverse rulings pertain to the sufficiency of the evidence to support Burris's convictions. However, the sufficiency arguments are not preserved for appeal because at the close of the State's case, Burris's counsel declined to make a directed-verdict motion, stating that it was a question of fact for the jury. Rule 33.1(a) of the Arkansas Rules of Criminal Procedure provides, "In a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all of the evidence. A motion for directed verdict shall state the specific grounds therefor." Rule 33.1(c) states, "The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required . . . will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment." Since no directed-verdict motion was made, any sufficiency argument was not preserved for appeal.

included in the addendum in accordance with Rule 4-2 of the Rules of the Arkansas Supreme Court and Court of Appeals. This omission has now been rectified.

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Burris appears to raise three pro se points on appeal—the sufficiency of the evidence, the photo lineup, and his attorney's representation. None of these points are preserved for appeal. As discussed above, any argument regarding the sufficiency of the evidence was waived when no directed-verdict motion was made. Likewise, because Burris failed to object to the witness's in-court identification of him, any argument regarding the earlier photographic lineup is not preserved for appeal. *See Isom v. State*, 356 Ark. 156, 148 S.W.3d 257 (2004). Finally, Burris's argument that his counsel was ineffective was not made below and therefore is not preserved. A claim of ineffective assistance of counsel may be raised on direct appeal only when it has been raised to the trial court and the facts and circumstances regarding the claim have been fully developed at the trial level. *See Mingo v. State*, 2011 Ark. App. 377. Here, no ineffective-assistance claim was raised below; therefore, it is not preserved for appeal.

From a review of the record and the brief presented to this court, Burris's counsel has complied with the requirements of Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals. Counsel's motion to be relieved is granted and appellant's convictions are affirmed.

Affirmed; motion granted.

ABRAMSON and HOOFSMAN, JJ., agree.