

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR12-165

CARLETUS ADAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered August 29, 2012APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[No. CR-08-332]HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED; MOTION GRANTED

LARRY D. VAUGHT, Chief Judge

This is a criminal appeal in which the appellant, Carletus Adams, entered a guilty plea for failure to comply with the reporting requirements of the Sex Offender Registration Act. On April 23, 2008, Adams was sentenced to sixty months' suspended imposition of sentence (SIS). At the time, he agreed to certain terms and conditions of his SIS, including a requirement that he "not violate federal, state, or municipal law." However, on December 20, 2011, Adams entered a guilty plea to driving while intoxicated (DWI) and refusal to submit to a breath test.

Following the entry of this plea on December 21, 2011, the State filed a petition to revoke Adams's SIS, alleging that he had committed the offenses of DWI and refusal to submit to a breath test and that he had failed to pay his fines and court costs from the 2008 conviction. On February 8, 2012, the Sebastian County Circuit Court held a revocation hearing, during which Adams admitted to entering the guilty pleas to the DWI and related charges. Based on this, the court found that Adams had violated the terms and conditions of his SIS and ordered

that he serve two years' imprisonment in the Arkansas Department of Correction, with an additional eight years suspended.

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 Adams has filed a motion to be relieved as counsel and a brief stating that there is no merit to the appeal. 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. 256, at 2, 334 S.W.3d 82, 83.

Here, Adams's counsel's brief addresses all adverse rulings and otherwise complies with all the strictures of Rule 4-3(k) and *Anders*. The State concurs that Adams's counsel has complied with Rule 4-3(k) and that the appeal has no merit. Adams was notified of his right to file a pro se brief within thirty days, and on April 4, 2012, he filed pro se points for reversal. In his points, he admits that the DWI conviction was true, but he states that (contrary to the petition filed by the State) he has regularly paid his fines and costs as ordered. He also presents a would-be-ineffective-assistance-of-counsel argument that he was erroneously denied an alternative sentence that did not include incarceration. However, none of these arguments are potentially meritorious.

First, his argument regarding ineffective assistance of counsel is not preserved for our review because he failed to raise it below. *Davis v. State*, 368 Ark. 401, 409, 246 S.W.3d 862, 869 (2007). Second, a trial court may revoke an SIS at any time prior to the expiration of the period if it finds by a preponderance of the evidence that the defendant inexcusably failed to comply with a condition of the SIS. *Alston v. State*, 2010 Ark. App. 592, at 2. Proof of violation of just one term or condition is sufficient to support revocation. *Dooly v. State*, 2010 Ark. App. 591, at 3. Third, because he received a sentence within the range of the sentencing for the original conviction, there is no merit to his argument that he should have received an alternative sentence that did not include incarceration. *Jones v. State*, 2012 Ark. App. 69, at 7–8.

Thus, based on our review of the record for potential error, pursuant to *Anders* and the requirements of Ark. Sup. Ct. R. 4-3(k), we agree that Adams’s appeal is wholly without merit. Therefore, the conviction is affirmed, and his attorney’s motion to withdraw is granted.

Affirmed; motion granted.

ROBBINS and ABRAMSON, JJ., agree.

Wallace, Martin, Duke & Russell, by: *Heather Martin-Herron*, for appellant.

Dustin McDaniel, Att’y Gen., by: *Nicana C. Sherman*, Ass’t Att’y Gen., for appellee.