

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR12-839

HONOR WILLIAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 15, 2013

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2006-1391]HONORABLE JOHN N.
FOGLEMAN, JUDGEREBRIEFING ORDERED; MOTION
DENIED**RITA W. GRUBER, Judge**

On February 5, 2007, Honor Williams pleaded guilty to felony possession of a controlled substance and was placed on ninety-six months' supervised probation, subject to written conditions. The State subsequently filed a petition to revoke probation based on his violation of particular conditions. The circuit court found at the conclusion of a July 5, 2012 hearing that Williams had inexcusably violated conditions by failing to report to his probation officer as directed and by using marijuana. The circuit court revoked probation upon this finding and sentenced Williams to sixty months' imprisonment in the Arkansas Department of Correction.

As allowed by Rule 4-3 of the Rules of the Arkansas Supreme Court and Court of Appeals, his counsel has filed what is characterized as a no-merit appeal and a motion asking to be relieved as counsel. Williams has not filed points for reversal despite being notified by

the clerk of our court that he had thirty days to do so.

We have explained in previous opinions that counsel must follow the appropriate procedure in a no-merit appeal because its “framework” ensures that defendants are afforded their constitutional rights. *Caldwell v. State*, 2009 Ark. App. 526, at 2, 334 S.W.3d 82, 83. We order rebriefing in the present case because the brief that counsel has presented, particularly its argument portion, does not meet the requirements of Rule 4-3(k)¹ or *Anders v. California*, 386 U.S. 738 (1967), for a no-merit appeal. See *Dewberry v. State*, 341 Ark. 170, 172, 15 S.W.3d 671, 672 (2000) (denying motion to withdraw and remanding for rebriefing in a no-merit appeal because counsel’s brief lacked “any discussion as to why a particular ruling by the trial court should not be meritorious grounds for reversal”); cf. *Cannon v. State*, 2013 Ark. App. 10; *Maxwell v. State*, 2009 Ark. App. 533, 336 S.W.3d 881 (granting motions to withdraw and affirming revocations where issues included sufficiency of the evidence).

The brief accompanying an attorney’s request to withdraw from appellate representation on the ground that the appeal is wholly without merit must contain a list of all rulings adverse to the defendant made by the trial court and an explanation as to why each adverse ruling does not constitute a meritorious ground for reversal. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). In deciding whether to allow counsel to withdraw from appellate representation, the test is not whether counsel thinks the trial court committed no reversible error, but rather whether the points to be raised on appeal would be wholly

¹Counsel’s motion to withdraw improperly cites Ark. Sup. Ct. R. 4-3(j). We note the appropriate subsection is now 4-3(k).

frivolous. *Id.* The decision to revoke is an adverse ruling that must be addressed by counsel in an *Anders* brief. *Brown v. State*, 85 Ark. App. 382, 155 S.W.3d 22 (2004) (citing *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001)).

In the present case, the sole ruling adverse to appellant was the decision to revoke. The argument section of counsel's no-merit brief, although fairly summarizing testimony about Williams's violations of conditions of probation, fails to discuss or explain "why" this adverse ruling does not constitute a meritorious ground for reversal. *See* Ark. Sup. Ct. R. 4-3(k)(1). Counsel's argument does not reference Rule 4-3, nor does it apply the appropriate standard of review or any case law to the circuit court's determination that Williams violated two conditions. Counsel simply recites the circuit court's ruling and states, "Since Appellant did not provide a reasonable excuse for not (sic) having violated a condition of his probation, the lower court should be affirmed."

Despite counsel's conclusion that the revocation should be affirmed along with his motion's statement that "this appeal is wholly without merit," the table of contents in his brief includes an argument that the circuit court "committed error" by pronouncing an "illegal sentence." Additionally, his informational statement misidentifies the revocation case as CR 2008-325 from the circuit court, a case in which the underlying felony was aggravated residential burglary.²

The briefing deficiencies set forth in our opinion are not to be taken as an exhaustive

²Counsel's motion to withdraw and notice of appeal properly identify the case before us as CR 2006-1391 from the circuit court.

list. We direct counsel to thoroughly familiarize himself with the requirements of Rule 4-3(k)(1) and with no-merit case law in addition to those cases we have cited. Counsel's substituted brief, abstract, and addendum are due within fifteen days from the date of our decision. Ark. Sup. Ct. R. 4-2(b)(3) (2011). We express no opinion as to whether the new appeal should be made pursuant to Rule 4-3(k)(1) or should be on meritorious grounds. If a no-merit brief is filed, counsel's motion and brief will be forwarded by our clerk to appellant so that, within thirty days, he again will have the opportunity to raise any points he so chooses in accordance with Ark. Sup. Ct. R. 4-3(k)(2). In either instance, the State shall be afforded the opportunity to file a responsive brief.

Rebriefing ordered; motion to withdraw denied.

GLOVER and VAUGHT, JJ., agree.

C. Brian Williams, for appellant.

No response.