

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR12-843

MAURICE JEFFERSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 15, 2013APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[No. CR-09-1262]HONORABLE JOHN N.
FOGLEMAN, JUDGEREBRIEFING ORDERED; MOTION
DENIED**LARRY D. VAUGHT, Judge**

On July 16, 2012, the Crittenden County Circuit Court revoked the probation of appellant Maurice Jefferson and sentenced him to three years' 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, Jefferson's counsel has filed what is characterized as a no-merit-appeal brief and a motion asking to be relieved as counsel. Jefferson was provided with a copy of his counsel's brief and notified of the right to file a pro se statement of additional points on appeal within thirty days. Jefferson has not filed points on appeal, and the State did not file a brief. We deny counsel's motion and order rebriefing.

On April 16, 2010, Jefferson pled guilty to fleeing, a Class C felony, and was placed on probation for a period of five years. Among the conditions of his probation were the requirements that he pay fines, court costs, and fees totaling \$2020; pay probation-supervision

fees; report to his probation officer as directed; work at suitable employment; report his current address and place of employment to his probation officer; and not move or remain out of the jurisdiction of the court. On October 6, 2011, the State filed a petition to revoke Jefferson's probation, alleging that he had violated the terms of his probation by (1) failing to pay fines, costs, and fees; (2) failing to report to his probation officer; (3) failing to pay probation fees; (4) failing to notify the sheriff and his probation officer of his current address and employment; (5) departing from an approved residence without permission; and (6) failing to work regularly at suitable employment.

At the July 5, 2012 probation hearing, the State first produced testimony that Jefferson made no payments toward the \$2020 he owed in costs, fines, and fees. Next, Jefferson's probation officer testified that after Jefferson had been sentenced to probation on April 16, 2010, he was extradited to Missouri, where he was later placed on probation. On November 18, 2010, Jefferson called the Arkansas probation office and requested that his Missouri probation be transferred to Arkansas. Jefferson was told that a transfer request had to be made in person, and he was told to report in Arkansas on December 7, 2010. Jefferson failed to report on that date. The probation officer testified that Jefferson never reported to the Arkansas probation office.

Jefferson testified that after he had been extradited to Missouri, he requested that his probation be transferred to Arkansas. He confirmed that he was told he would have to come to Arkansas to have the paperwork for that request completed but said that he did not have the money to travel to Arkansas at that time. However, he testified that he returned to

Arkansas a year later in December 2011 but did not report because he was saving money to pay his costs, fees, and fines.

At the conclusion of the hearing, the trial court, focusing on the time period after which Jefferson had returned to Arkansas, revoked Jefferson's probation for failing to report to his probation officer. In a sentencing order filed July 16, 2012, the trial court sentenced him to three years' imprisonment.

A request to withdraw as counsel on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and addendum. Ark. Sup. Ct. R. 4-3(k)(1) (2012). The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant 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. *Id.*

Counsel abstracted two adverse evidentiary rulings that occurred during the revocation hearing, he listed the adverse rulings in the argument section of his brief, and he explained why there is no merit to an appeal of these adverse rulings. However, the third adverse ruling in this case was the revocation decision, and on this point, we hold that counsel failed to comply with the rules for the filing of a no-merit appeal. Counsel merely summarizes the testimony from the revocation hearing, states that the State has the burden to prove that a defendant violated one condition of his probation, and concludes that "the trial court found that defendant had inexcusably failed to report to probation." Counsel fails to explain why the revocation decision is not a meritorious ground for reversal. His brief does not reference Rule

4-3(k), which governs the filing of no-merit appeals. Although his motion to withdraw does state that the appeal is “wholly without merit,” it cites Rule 4-3(j), which governs the preparation of briefs for indigent appellants. Therefore, we order counsel to submit a brief that complies with Rule 4-3(k). We urge counsel to carefully examine the record and to review the rules before resubmitting a no-merit brief. See *Honor Williams v. State*, 2013 Ark. App. 323.

Rebriefing ordered; motion denied.

GRUBER and GLOVER, JJ., agree.

C. Brian Williams, for appellant.

No response.