

ARKANSAS COURT OF APPEALS

DIVISION III

No. CR-12-1107

GARY WEATHERSBY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 19, 2013APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT,
[NO. CR-2007-1259]HONORABLE RALPH WILSON, JR.,
JUDGEAFFIRMED; MOTION TO
WITHDRAW GRANTED**ROBERT J. GLADWIN, Chief Judge**

This is a no-merit appeal from the revocation of appellant's probation and the resulting six-year prison sentence. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) (2012) of the Rules of the Arkansas Supreme Court, appellant's counsel has filed a motion to withdraw on the basis that the appeal is without merit. Appellant's counsel's motion was accompanied by a brief discussing all matters in the record that might arguably support an appeal, including all adverse rulings and the trial court's ultimate determination that appellant violated a condition of his probation, and a statement as to why the evidence was sufficient and cannot support a meritorious appeal. Appellant, Gary Weathersby, was provided with a copy of his counsel's brief and notified of his right to file a list of pro se points within thirty days, but appellant did not file any points for reversal. Accordingly, the State declined to file a brief. We grant counsel's motion to withdraw and affirm the revocation.

On May 12, 2008, appellant pled guilty to possession of a controlled substance with intent to sell, a Class C felony, and received a sentence of thirty-six months' probation. The State filed a petition for revocation on December 10, 2008, alleging that appellant violated the conditions of his probation by failing to pay fines, costs, and fees as directed; failing to report to probation officer as directed; failing to pay probation fees; and failing to notify the sheriff and probation of his current address and employment. This petition was amended on September 7, 2010, adding the allegations that appellant had committed aggravated robbery and possession of a firearm by a felon; had associated with others violating criminal laws; and had garnered criminal convictions in Tennessee.

At the hearing on the petition to revoke, appellant's counsel objected to the introduction of State's Exhibit One, which was a copy of a judgment from the State of Tennessee against appellant, where he pled guilty to solicitation to commit aggravated robbery. Counsel's objection was based on the confrontation clause. The trial court overruled the objection and allowed admission of the evidence.

Amy Peyton, who is employed by the Crittenden County Sheriff's Department, collects fees and fines and testified that appellant had made no payments on his fees and fines. April Thomas, a probation supervisor, testified that appellant had failed to report to probation after his initial visit, owed \$700 in supervision fees, and had made no payments. The trial court denied appellant's motion for directed verdict arguing that the State failed to prove that appellant failed to report to probation as directed. The trial court found that appellant inexcusably failed to comply with the conditions of his probation by failing to pay all his fines,

fees, or costs. Further, appellant failed to live a law-abiding life by violating the laws of the State of Tennessee. Also, the trial court found that appellant inexcusably failed to report to his probation officer and failed to pay his probation fees.

If, after a conscientious examination of the record, an attorney believes that an appeal would be wholly frivolous, he can request permission from the court to withdraw. *Anders, supra*. This request, however, must be accompanied by a brief discussing all adverse rulings that might arguably support the appeal and explaining why each adverse ruling is not a meritorious ground for reversal. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001).

Counsel contends that the circuit court's error in overruling appellant's objection based on the confrontation clause was harmless error, as only one violation will suffice for a revocation. *Dooly v. State*, 2010 Ark. App. 591, 377 S.W.3d 471. Further, counsel maintains that the circuit court did not err by denying appellant's motion for directed verdict, as April Thomas testified that appellant had not reported, save one time, and appellant did not testify and provide a reasonable excuse for not reporting.

Based on our review of the record and the brief presented to this court, we conclude that there has been full compliance with Rule 4-3(k) and that the appeal is without merit. Counsel's motion to be relieved is granted, and the judgment of conviction is affirmed.

Affirmed; motion to withdraw granted.

WALMSLEY and HARRISON, JJ., agree.

C. Brian Williams, for appellant.

No response.