

Cite as 2019 Ark. App. 17

ARKANSAS COURT OF APPEALS

DIVISION II

No. CR-18-316

JOSHUA RIGSBY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: January 16, 2019

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. 46CR-16-709]

HONORABLE CARLTON D. JONES,
JUDGE

SUPPLEMENTATION OF THE
RECORD AND REBRIEFING
ORDERED; MOTION TO
WITHDRAW DENIED

MIKE MURPHY, Judge

In this no-merit appeal, the Miller County Circuit Court revoked Joshua Rigsby’s probation and sentenced him to six years in the Arkansas Department of Correction. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), Rigsby’s counsel has filed a motion to be relieved as his attorney, alleging that this appeal is without merit.¹ Counsel has also filed a brief in which he contends that all adverse rulings have been abstracted and discussed. Rigsby was provided with a copy of his counsel’s brief and motion and informed of his right to file pro se points. Rigsby has chosen to file

¹Appellate counsel fails to cite *Anders, supra*, and Rule 4-3(k) in his motion to be relieved but cites them within his appellate brief. It is imperative that appellate counsel follow the appropriate procedure when filing motions to withdraw as counsel. See *Brown v. State*, 85 Ark. App. 382, 392, 155 S.W.3d 22, 28 (2004). It would be the better practice to include those citations in the motion.

pro se points for reversal. We deny counsel's motion to withdraw and order supplementation of the record.

Arkansas Supreme Court Rule 4-2(a)(8) requires that the addendum to appellant's brief include all documents that are essential for the appellate court to understand the case and to decide the issues on appeal. *See also* Ark. Sup. Ct. R. 4-3(k)(1) ("The abstract and Addendum of the brief shall contain, *in addition to the other material parts of the record*, all rulings adverse to the defendant made by the circuit court." (emphasis added)). Rigsby's addendum does not contain his written conditions of probation, which is essential to our review of this case and his counsel's argument that the circuit court did not err in finding that Rigsby violated a condition. *See Baney v. State*, 2016 Ark. App. 405. Moreover, Rigsby's written conditions of probation are not contained in our record. If anything material to either party is omitted from the record by error or accident, we may direct that the omission be corrected and, if necessary, that a supplemental record be certified and transmitted. Ark. R. App. P.–Civ. 6(e) (made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a)).

Because of the deficiency in the record, we remand to the circuit court to settle and supplement the record with the necessary document containing Rigsby's written conditions of probation, to be completed within thirty days. Upon filing of the supplemental record, counsel shall have fifteen days in which to file a substituted abstract, addendum, and brief. *See* Ark. Sup. Ct. R. 4-2(b)(3). We encourage Rigsby's counsel to review Rule 4-2 of the Rules of the Arkansas Supreme Court and Court of Appeals to ensure that the substituted abstract, brief, and addendum comply with the rules and that no additional deficiencies are present.

Supplementation of the record and rebriefing ordered; motion to withdraw denied.

HARRISON and HIXSON, JJ., agree.

Phillip A. McGough, P.A., by: *Phillip A. McGough*, for appellant.

Leslie Rutledge, Att’y Gen., by: *Christian Harris, Ass’t Att’y Gen.*, for appellee.