

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR11-815

JUSTIN DEES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** January 25, 2012

APPEAL FROM THE POLK  
COUNTY CIRCUIT COURT  
[NO. CR-2005-51-4; CR-2005-81-4]

HONORABLE J.W. LOONEY, JUDGE

REMANDED TO SETTLE THE  
RECORD; REBRIEFING ORDERED

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## RITA W. GRUBER, Judge

Justin Dees appeals the revocation of his suspended imposition of sentence for criminal mischief, two counts of commercial burglary, and two counts of theft of property. He contends that the State did not prove by a preponderance of the evidence that he inexcusably failed to comply with a condition of his suspended sentence. The State alleged in its petition to revoke that Dees violated the condition of his suspended sentence requiring him to lead a law-abiding life and to commit no offense punishable by imprisonment. The circuit court granted the revocation and imposed a sentence of seventy-two months' imprisonment. We remand to settle the record and supplement the addendum.

Arkansas Supreme Court Rule 4-2(a)(8) (2011) requires that the addendum to appellant's brief include all documents essential to the appellate court's resolution of the issues on appeal. In *Johnson v. State*, 2011 Ark. App. 627, a revocation case, appellant contended there was not substantial evidence that he had committed a criminal offense punishable by



incarceration. We found appellant's addendum deficient and ordered that it be supplemented with the judgment and commitment orders related to the suspended sentences; because the judgment and commitment orders were not contained in the record, we also directed the parties to supply any omitted material by filing a certified, supplemental record. *See* Ark. R. App. P.–Civ. 6(e) (2011) (made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a) (2011); allowing correction or modification of the record). Appellant's supplemental addendum upon rebriefing included the judgment and commitment order resulting from the revocation, but not the judgment and commitment orders from his underlying convictions; we again remanded for supplementation of the record and rebriefing. *Johnson v. State*, 2011 Ark. App. 697.

In the present case, absent from both the addendum and the record is the underlying order of judgment and commitment. Dees also has failed to include the conditions and terms of his suspended sentence.<sup>1</sup> We encourage him to review Rule 4–2 of the Rules of the Arkansas Supreme Court and Court of Appeals to ensure that the substituted brief complies with the rules and that no additional deficiencies are present.

We remand to the circuit court for settlement and supplementation of the record with the necessary judgment and commitment orders, to be completed within thirty days. Within fifteen days of filing the supplemental record, Dees shall file a substituted abstract, addendum, and brief. *See* Ark. Sup. Ct. R. 4–2(b)(3) (stating that a party who files a deficient brief is allowed an opportunity to file a conforming brief). If Dees fails to do so, the judgment and

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<sup>1</sup>The addendum includes the judgment and commitment order after revocation.



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conviction he now appeals may be affirmed for noncompliance with Rule 4–2. *Id.* Should Dees file a substituted abstract, brief, and addendum, the State may revise or supplement its brief within fifteen days of the filing of his brief or may rely on its previously filed brief. *Id.*

Supplementation of record and rebriefing ordered.

MARTIN and BROWN, JJ., agree.