

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR11-568

FELIPE REYES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 8, 2012

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT,
[NO. CR-2000-553-3]

HONORABLE KIRK JOHNSON,
JUDGE

REMANDED TO SETTLE THE
RECORD; REBRIEFING ORDERED

RITA W. GRUBER, Judge

Felipe Reyes appeals the revocation of his suspended imposition of sentence for breaking or entering, which resulted in a sentence of four years' imprisonment in the Arkansas Department of Correction. The revocation was based upon the court's finding that Reyes had failed to pay any monies toward his fines, fees, restitution, and costs even though he was employed for many months. The court further found that Reyes presented "no reasonable excuse" other than his unbelievable explanation that he had been released from the financial obligations by his parole officer. Reyes contends on appeal that at his revocation hearing on February 1, 2011, the State offered no evidence that his failure to pay was willful. Therefore, Reyes concludes that the trial court abused its discretion by revoking his suspended sentence. Because Reyes's addendum is not in compliance with Arkansas Supreme Court Rule 4-2(a)(8)(A), we do not consider the appeal at this time.



The hearing at issue was held on the State's September 23, 2010 petition to revoke for violation of terms and conditions of a suspended sentence entered on February 28, 2008. According to the circuit court's findings of fact, in 2001 Reyes was placed on probation for breaking or entering, and he was ordered to pay fines, costs, and restitution; a 2006 petition to revoke alleged violations including a failure to pay; and in 2008 the circuit court accepted Reyes's "true" plea to the 2006 allegations, sentenced him to a term of two years' imprisonment with an additional four years' suspended imposition of sentence, and gave him conditions of suspended sentence. Also according to the court's findings, Reyes executed the conditions of his suspended sentence in 2008, which "clearly stated that he owed all previously assessed fines, fees, restitution and costs at his original plea and the additional fees, transport costs and court costs assessed in the first revocation proceedings."

Reyes specifies in his notice of appeal and designation of record that "the entire record" is the record on appeal, and he states in the filing that a record was made of all hearings and that the record was ordered from the circuit court clerk. The record thus would necessarily include the 2001 judgment and commitment order in the underlying case of breaking or entering, which resulted in probation subject to specified conditions, as well as the 2008 order, resultant sentence, and conditions. *See* Ark. Sup. Ct. R. 4-2(a)(8) (2011) (requiring that the addendum include "any document essential to an understanding of the case and the issues on appeal"); *Johnson v. State*, 2011 Ark. App. 627 (finding appellant's addendum deficient and ordering supplementation with judgment and commitment orders related to the suspended sentences, and directing the parties to supply any omitted material by filing a



certified, supplemental record).

We remand to the circuit court to settle the record with the necessary judgment and commitment orders, as well as conditions of probation, to be completed within thirty days. Within fifteen days of filing the supplemental record, Reyes 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). We strongly encourage him, prior to filing another substituted brief, abstract, and addendum, to review our rules and avoid additional deficiencies. Should Reyes 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.* In the event Reyes fails to file a complying brief within the requisite time period, the judgment may be affirmed for noncompliance with the rule. *Id.*

Supplementation of record and rebriefing ordered.

MARTIN and BROWN, JJ., agree.

Jason Horton Law Firm, by: *Jason Horton*, for appellant.

Dustin McDaniel, Att’y Gen., by: *Pamela A. Rumpz*, Ass’t Att’y Gen., for appellee.