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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-1060

RAOUL JUAN LUEVANO APPELLANT	**Opinion Delivered** April 18, 2012 APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. CR-2006-61-1]
V.	HONORABLE ROBIN F. GREEN, JUDGE
STATE OF ARKANSAS APPELLEE	REBRIEFING ORDERED

JOHN MAUZY PITTMAN, Judge

Appellant pled guilty to arson in 2006 and was placed on probation pursuant to the First Offender Act.[1] His probation was conditioned upon specific terms, including that he refrain from committing any offense punishable by imprisonment. After his term of probation expired, appellant petitioned the court to seal the record of his arson conviction. The trial court denied the motion based on a finding that appellant had, during his probationary period, pled guilty in Iowa to an offense punishable by imprisonment. This appeal followed.

We cannot entertain the merits of appellant's appeal at this time because his addendum does not comply with Arkansas Supreme Court Rule 4-2(a)(8)(A)(i). First, appellant's addendum omits one of the orders from which the appeal is taken. Appellant purports to appeal from both an order denying his petition to seal the record and an order denying his motion to reconsider, but the only order appearing in the addendum is the denial of the

[1]Act 346 of 1975, codified at Ark. Code Ann. §§ 16-93-301 to -303.

motion to reconsider. Second, appellant's addendum is not sufficient to allow us to determine our jurisdiction. Because several motions and orders—including the order denying expungement—have been omitted from the addendum, we are unable to determine from the addendum whether the trial judge acted on the motion to reconsider before it was deemed denied pursuant to Ark. R. App. P.–Civil 4(b). *See State v. Burnett*, 368 Ark. 625, 249 S.W.3d 141 (2007); *see also Slaton v. Slaton*, 330 Ark. 287, 956 S.W.2d 150 (1997). Third, Rule 4-2(a)(8)(A)(i) requires that an appellant's addendum include the pleadings on which the trial court decided each issue, including answers and replies, but appellant has failed to include in his addendum the State's response to his petition to seal the record.

Although the defects we have noted should not be construed to be a complete list of the deficiencies contained in appellant's abstract and addendum, it is clear that the addendum is flagrantly deficient and, under prior law, affirmance for noncompliance with Rule 4-2 would be warranted. *See, e.g.*, *Carter v. State*, 326 Ark. 497, 932 S.W.2d 324 (1996).[2] Under current law, appellant is afforded one opportunity to cure any and all deficiencies pursuant to Rule 4-2(b)(3). Consequently, we order appellant to cure the deficiencies by filing a substituted brief, abstract, and addendum within fifteen days. In the event that appellant fails to file a complying brief within the prescribed time period, the judgment may be affirmed for

[2]Although we are routinely required to order rebriefing because of deficiencies in the abstract and addendum on appeal, the flaws in the present case are particularly troubling because they tend to conceal a possible jurisdictional issue. Regarding the declining quality of appellate briefs, see *In re Appellate Practice Concerning Defective Briefs*, 369 Ark. App'x 553 (2007); compare *In re Arkansas Supreme Court and Court of Appeals Rules 4-1 and 4-2*, 2009 Ark. 350.

noncompliance with the rule. *See* Ark. Sup. Ct. R. 4-2(b)(3). We further direct appellant to discuss whether the trial court acted on the motion to reconsider before it was deemed denied pursuant to the authorities cited above.

Rebriefing ordered.

ABRAMSON and BROWN, JJ., agree.

Brianne Franks, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rachel Hurst Kemp*, Ass't Att'y Gen., for appellee.