

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA12-785

RB

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 27, 2013

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[No. JV-12-301]

HONORABLE VICKI SHAW COOK,
JUDGE

REBRIEFING ORDERED

LARRY D. VAUGHT, Judge

On May 31, 2012, appellant RB was found delinquent by the Garland County Circuit Court of four counts of aggravated assault and carrying a weapon. His disposition included placement at the Division of Youth Services (DYS) under Extended Juvenile Jurisdiction along with a three-year suspended imposition of sentence (SIS) in the Arkansas Department of Correction (ADC). Two weeks later, at a June 14, 2012 hearing, the trial court found RB delinquent of obstruction of governmental operations and four counts of assault in the first degree. After the trial court made its delinquency finding, the State orally petitioned to revoke RB's three-year SIS and requested that he be committed to the ADC. The trial court granted the oral petition and sentenced RB to three years' imprisonment. It is from this order that RB appeals arguing that (1) substantial evidence fails to support the trial court's finding that he was delinquent of obstruction of governmental operations; (2) the trial court erred in allowing the State to orally petition to revoke his SIS; and (3) the trial court erred in revoking his SIS



because he had not been transported to DYS when the new offenses (obstruction of governmental operations and first-degree assaults) occurred. We are unable to reach the merits of RB's points on appeal because he failed to comply with our abstract, brief, and addendum requirements.

Arkansas Supreme Court Rule 4-2(a)(5)(B) (2012) sets forth the abstracting requirements, stating in pertinent part:

(B) *Form.* The abstract shall be an impartial condensation, without comment or emphasis, of the transcript *The abstract must not reproduce the transcript verbatim.* In abstracting testimony, the first person (“I”) rather than the third person (“He or She”) shall be used. *The question-and-answer format shall not be used.*

(Emphasis added.) Here, RB's abstract is a verbatim reproduction of the transcript of the June 14, 2012 hearing before the trial court. Further, the abstract is in question-and-answer format, which is expressly forbidden by Rule 4-2(a)(5)(B). *Mace v. State*, 2012 Ark. App. 42, at 2.

Additionally, RB's addendum is deficient. Arkansas Supreme Court Rule 4-2(a)(8)(A)(i) (2012) requires that the addendum to appellant's brief include all documents essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal. In the case at bar, RB has omitted from his addendum several documents contained in the record that are necessary for our review: (1) page two of the May 31, 2012 Extended Juvenile Jurisdiction Adjudication, Delinquency Adjudication, and DYS order; (2) the May 31, 2012 Delinquency Adjudication & Disposition Order—DYS Commitment; (3) the June 26, 2012 Sentencing Order, sentencing RB to the ADC.

Our rules also require that “if an exhibit or other item in the record cannot be reproduced in the addendum, then the party making the addendum must file a motion



seeking a waiver of the addendum obligation.” Ark. Sup. Ct. R. 4-2(a)(8)(A)(ii) (2012). RB failed to file a motion for waiver of the addendum obligation.

Based upon the deficiencies in RB’s abstract and addendum, we hereby order rebriefing and direct RB to file a substituted brief that complies with our rules. Ark. Sup. Ct. R. 4-2(b)(3) (2012) (allowing parties who file a deficient brief an opportunity to file a conforming brief). The substituted brief, abstract, and addendum shall be due fifteen days from the date of this order. After service of the substituted brief, abstract, and addendum, the State shall have an opportunity to revise or supplement its brief due fifteen days from the date RB files his substituted brief or the State may choose to rely on the brief previously filed in this appeal. While we have noted the above-mentioned deficiencies, we encourage RB’s counsel to review Rule 4-2 in its entirety as it relates to the abstract and addendum, as well as the entire record, to ensure that no additional deficiencies are present, as any subsequent rebriefing order may result in affirmance of the order or judgment due to noncompliance with Rule 4-2. *Carter v. Cline*, 2011 Ark. 266, at 2 (citing Ark. Sup. Ct. R. 4-2(b)(3)); *see also Coney v. State*, 319 Ark. 709, 711, 894 S.W.2d 583, 584 (1995) (holding that the appellant’s flagrantly deficient abstract warranted affirmance of a judgment of conviction for noncompliance with the rule governing abstracts).

Rebriefing ordered.

HARRISON and WOOD, JJ., agree.

Kelsay Law Firm, P.A., by: *Ronald D. Kelsay*, for appellant.

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