

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR12-70

RECO GIVAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 24, 2013

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NOS. CR-2006-2907; CR-2007-27]

HONORABLE RHONDA K. WOOD,
JUDGE

REMANDED TO SETTLE THE
RECORD; REBRIEFING ORDERED

JOHN MAUZY PITTMAN, Judge

Appellant was placed on probation for a period of five years following his 2007 convictions for residential burglary, theft of property, and violation of the Controlled Substances Act. Appellant asserts that a petition for revocation asserting several violations of the conditions of his probation was filed in 2011 and that, after a revocation hearing, his probation was revoked, resulting in a sentence to a term of imprisonment. On appeal, appellant argues that the evidence was insufficient to support a finding that he had knowledge of the conditions of his probation; that the trial court erred in exercising jurisdiction because he was convicted in a different division; that the trial court erred in denying his motion to dismiss based on alleged discovery violations; that he was denied due process because the State failed to inform him of the specific acts in violation of the

conditions of his probation that he was alleged to have committed; and that the trial court lacked jurisdiction to hold a revocation hearing more than sixty days following his arrest.

Because the record is incomplete and appellant's addendum is not in compliance with Arkansas Supreme Court Rule 4-2(a)(8)(A), we do not consider his appeal at this time. That rule requires that the addendum contain various documents, including the pleadings on which the circuit court decided each issue. However, appellant failed to include the petition to revoke in his addendum. Additionally, appellant's addendum fails to include pages 48–49 of the record, consisting of an attachment to the petition to revoke. Like a complaint in a civil case, a petition to revoke is a fundamental and necessary pleading in a revocation case.

Furthermore, the record in this case is incomplete. As pointed out by the State in its brief, the petition to revoke should appear at page 47 of the transcript, but it is not there. Page 47 is completely missing from the record, with an order of dismissal on page 46 and a “worksheet for revocation” on page 48. Appellant, apparently seeking to remedy the defect in the record, includes on page 113 of his addendum a purported reproduction of the petition to revoke that was introduced as an exhibit and appears in the record at page 81. This is both misleading and inadequate. Additionally, appellant has included on page 27 of his addendum an exhibit that is purported to be a reproduction of an alias bench warrant, which ostensibly should appear as page 84 of the record. However, the record contains no page 84. Rule 4-2(a)(8) clearly provides that the addendum shall not contain any material that is not in the record. Moreover, as with the petition to revoke, the returned warrant itself appears on page 164 of the record, but that page is not included in the addendum

We remand for the circuit court to settle the record as it relates to the petition to revoke and any other missing documents, to be completed within thirty days. Because we are required to permit a party filing a deficient brief an opportunity to file a conforming brief, *see* Ark. Sup. Ct. R. 4-2(b)(3), we direct appellant to file a substituted abstract, brief, and addendum within fifteen days of filing the certified, supplemental record. After appellant files his substituted abstract, brief, and addendum, the State will be allowed fifteen days to revise or supplement its brief should it choose to do so. *Id.* Should appellant fail to file a conforming brief within the prescribed time, the judgment may be affirmed for noncompliance with the rule. Because we are required to allow only a single opportunity to cure any and all deficiencies in an appellant's abstract, brief, and addendum, we strongly encourage appellant to review the rules and to cure any additional deficiencies that we have not specifically identified.

Remanded to settle the record; rebriefing ordered.

GLADWIN, C.J., and VAUGHT, J., agree.

Teresa Bloodman, for appellant.

Dustin McDaniel, Att'y Gen., by: *Valerie Glover Fortner*, Ass't Att'y Gen., for appellee.