

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-11-415

EDWARD ANTHONY LIGGINS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered March 12, 2014

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. CR-09-1147]

HONORABLE CINDY THYER,
JUDGE

REBRIEFING ORDERED

WAYMOND M. BROWN, Judge

A Craighead County jury found appellant Edward Anthony Liggins guilty of first-degree murder and first-degree battery. He was sentenced to forty years' imprisonment for first-degree murder; however, his sentence was enhanced by fifteen years and ten years, respectively, for employing a firearm and for committing the crime in the presence of a child.¹ The sentence plus the enhancements were to run consecutively, for an aggregate sentence of sixty-five years' imprisonment. He was sentenced to twenty-years' imprisonment for first-degree battery. This sentence was to run concurrently to the sixty-five-year sentence.²

¹Ark. Code Ann. § 16-90-120 and Ark. Code Ann. § 5-4-702 (Supp. 2013).

²His probation on an underlying offense was also revoked and he was sentenced to thirty-years' imprisonment to run concurrently to the above convictions. However, the revocation is not an issue in this appeal.

Liggins subsequently filed a motion for a new trial. His motion was denied. He timely filed his notice of appeal.

Liggins argues on appeal that (1) the trial court erred by not ordering a mistrial when, during the penalty phase, a victim-impact witness improperly recommended to the jury that he receive a sentence of life without parole; (2) the trial court abused its discretion by not correcting the actions of trial counsel and the prosecutor when they read jury instructions during voir dire; (3) Liggins was denied counsel of his choice when the trial court refused to grant a continuance to allow Liggins's appellate counsel the opportunity to enter her appearance and prepare for trial; (4) the trial court committed reversible error when it insisted that Liggins continue to be represented by his trial counsel after Liggins clearly and unequivocally asserted his constitutional right to represent himself, thereby denying him his right to self-representation; (5) the trial court abused its discretion by denying Liggins's motion for new trial because his trial counsel's performance was deficient in that he abdicated his duty as counsel as guaranteed by the Sixth Amendment; (6) the trial court erred in denying Liggins's motion for directed verdict, because there was insufficient evidence to support his first-degree-murder conviction; (7) the trial court erred by imposing an illegal sentence when it did not sentence Liggins in accordance with Ark. Code Ann. §§ 5-1-103(a)³ and 5-4-104(a)⁴; (8) the trial court erred in denying Liggins's motion to suppress statements made while he was in police custody; and (9) the trial court erred by imposing an illegal sentence

³(Repl. 2006).

⁴(Supp. 2013).

when it ran the forty-year jury verdict, the fifteen-year firearm enhancement, and the ten-year enhancement for committing a felony in the presence of a child consecutively. We do not reach the merits of Liggins’s arguments due to deficiencies in his abstract, addendum, and brief.⁵

Liggins’s jurisdictional statement fails to comply with Rule 1-2(c) of the Arkansas Supreme Court Rules, which requires the first paragraph of the statement to “concisely state all issues of law raised on appeal” in “terms and circumstances of the case but without unnecessary detail.” The second paragraph “shall” state whether the appeal raises any “question(s) of legal significance for jurisdictional purposes.” Here, Liggins’s jurisdictional statement contains one sentence, which states, “I express a belief based on a reasoned and studied professional judgment that the questions in this appeal are jurisdictionally significant.” In addition, Liggins’s informational statement is incomplete and does not contain all portions as required by Rule 1-2(c).

Arkansas Supreme Court Rule 4-2(a)(5)(A)⁶ provides that all material parts of a transcript must be abstracted. “Information in a transcript is material if the information is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.”⁷ Here, Liggins’s abstract consists of over 1,230 pages. Many of

⁵This is the second time this case has been before us. We initially ordered supplementation of the record and rebriefing due to deficiencies in Liggins’s record and brief. *Liggins v. State*, 2012 Ark. App. 555.

⁶(2013).

⁷*Id.*

these pages are not material and should not be included in the abstract. We remind counsel that an abstract can be deficient for containing too much material, as well as too little.⁸

Arkansas Supreme Court Rule 4-2(a)(5)(B) states that the abstract shall be an impartial condensation, without comment or emphasis, of the transcript (stenographically reported material). It further states that the “question-and-answer format shall not be used” and that “brief quotations from the transcript” may be included if abstracting it will result in the loss of important meaning. Liggins has, throughout his abstract, used the question-and-answer format as well as inserted transcript pages in violation of the rule. This should be corrected and counsel should re-evaluate whether this information is material to the issues on appeal.

According to Arkansas Supreme Court Rule 4-2(a)(7), references in the argument “shall be followed by a reference to the page number of the abstract or addendum at which such material may be found.” Here, although Liggins has referenced abstract pages in his argument, the majority of the pages listed do not correspond with the material alleged to be found on those pages. Therefore, Liggins needs to correct this mistake and ensure that the abstract pages listed contain what the argument purports they do.

Arkansas Supreme Court Rule 4-2(a)(8) requires that an appellant’s brief include an addendum consisting of all documents essential to this court’s resolution of the issues on appeal, including exhibits. Here, Liggins has failed to include copies of the 911 CDs admitted into evidence and played for the jury, as well as a copy of the taped interview of a potential

⁸*Erwin v. Frost*, 2013 Ark. App. 440.

witness played during the hearing on his motion for a new trial. Additionally, the transcripts from these items need to be abstracted and placed in the brief.

Due to numerous deficiencies in Liggins's abstract, addendum, and brief, we order him to file a substituted brief that complies with our rules.⁹ The substituted brief, abstract, and addendum shall be due fifteen days from the date of this opinion.¹⁰ We remind counsel that the examples we have noted are not to be taken as an exhaustive list of deficiencies. Counsel should carefully review the rules to ensure that no other deficiencies exist. Failure to file a compliant brief after the opportunity to cure deficiencies has been afforded could result in counsel being referred to the Office of Professional Conduct as well as being subjected to other sanctions.¹¹

Rebriefing ordered.

PITTMAN and WYNNE, JJ., agree.

Teresa Bloodman, for appellant.

Dustin McDaniel, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.

⁹Ark. Sup. Ct. R. 4-2(b)(3).

¹⁰*Id.*

¹¹Ark. Sup. Ct. R. 4-2(c)(3).