

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR10-723

CHASMUN F. MILLER

APPELLEE

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** FEBRUARY 9, 2011

APPEAL FROM THE UNION  
COUNTY CIRCUIT COURT  
[NO. CR-2003-725-1]

HONORABLE HAMILTON H.  
SINGLETON, JUDGE

REMANDED TO SETTLE AND  
SUPPLEMENT THE RECORD

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## JOSEPHINE LINKER HART, Judge

Appellant, Chasmun F. Miller, appeals from the circuit court's revocation of his suspended imposition of sentences in case number CR-2003-725-1 for Class C felony possession of a controlled substance, cocaine, and Class D felony second-offense possession of a controlled substance, marijuana. Appellant asserts that the circuit court's judgment and commitment order erroneously states that he was sentenced to fifteen years' imprisonment on each count and that the order instead should have shown that he received five years' imprisonment on each count, as was ordered by the court at the revocation hearing.

On November 10, 2010, this court granted the State's motion to remand to correct the record. A supplemental record on remand was lodged with this court showing that the circuit court had entered on November 9, 2010, and on November 22, 2010, third and fourth

amended judgment and commitment orders sentencing appellant to five years' imprisonment on each count. An order, also filed November 22, 2010, explained the reason for the change.

Despite the correction, we must remand to settle the record because the record does not contain any of the pleadings, orders, and documents related to the 2005 proceedings where appellant received the sentences on which he was revoked. The State's petition to revoke indicates that appellant originally pleaded guilty in 2005 and was sentenced to three years' imprisonment on the marijuana charge—with there being no mention of a suspended imposition of sentence—and to five years' imprisonment with an additional suspended imposition of sentence of five years on the cocaine charge. The circuit court's order of November 22, 2010, indicates that appellant was sentenced in 2005 to three years' imprisonment on the marijuana count—again with no mention of a suspended imposition of sentence—and a five-year suspended imposition of sentence on the cocaine count—with no mention of a term of imprisonment.

Our concern here is that the fourth amended judgment and commitment order of November 22, 2010, provides that appellant's suspended imposition of sentence was revoked on both the marijuana count and the cocaine count, and he was sentenced to sixty months' imprisonment on each count. Absent the documents related to the 2005 judgment and disposition, we cannot determine (1) whether appellant received in 2005 any suspended imposition of sentence on the marijuana charge, or on the cocaine charge, that subsequently could be revoked; or (2) the length of any sentence to imprisonment on the marijuana charge,

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or on the cocaine charge, which would necessarily affect the length of any sentence he could receive upon revocation. Without the 2005 pleadings, orders, and documents, we cannot consider the legality of the sentences imposed on appellant upon revocation.

If anything material to either party is omitted from the record by error or accident, we may direct that the omission be corrected and that a supplemental record be certified and transmitted. Ark. R. App. P.–Civ. 6(e) (as made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a)); see *Hadley v. State*, 2010 Ark. App. 536. Accordingly, we remand the case to the circuit court to supplement the record. Appellant has ten days from today to file the supplemental record with our clerk’s office. After the record is supplemented, the parties shall have the opportunity to file substituted abstracts, addenda, and briefs. Ark. Sup. Ct. R. 4-2(b).

Remanded to settle and supplement the record.

PITTMAN and MARTIN, JJ., agree.