

Cite as 2011 Ark. App. 121

ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR10-579

Opinion Delivered FEBRUARY 16, 2011

TERRY PENISTER

APPELLANT

APPEAL FROM THE ARKANSAS
COUNTY CIRCUIT COURT, SOUTHERN
DISTRICT
[NO. CR09-24 SD]

V.

HONORABLE DAVID G. HENRY, JUDGE

STATE OF ARKANSAS

APPELLEE

REBRIEFING ORDERED

ROBERT J. GLADWIN, Judge

Appellant Terry Penister entered a conditional plea of guilty to theft of property and received a ten-year sentence in the Arkansas Department of Correction. Appellant brings this appeal seeking review of the denial of his motion to suppress in accordance with Arkansas Rule of Criminal Procedure 24.3(b) (2010), which provides:

With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of an adverse determination of a pretrial motion to suppress seized evidence or a custodial statement or a pretrial motion to dismiss a charge because not brought to trial within the time provided in Rule 28.1 (b)

or (c). If the defendant prevails on appeal, the defendant shall be allowed to withdraw the conditional plea.

Rule 24.3 requires that, in order for a conditional plea to be effective, there must be (1) approval of the court; (2) consent of the prosecuting attorney; and (3) a defendant's written reservation of the right to appeal. We have recognized that the supreme court has interpreted Rule 24.3(b) to require strict compliance with the requirements of the rule. *Hill v. State*, 81 Ark. App. 178, 100 S.W.3d 84 (2003). If the express terms of Rule 24.3(b) are not complied with, the appellate court acquires no jurisdiction to hear an appeal from a conditional plea. *Tabor v. State*, 326 Ark. 51, 930 S.W.3d 319 (1996).

Rule 4-2(a)(8) (2010) of the Arkansas Rules of the Supreme Court and Court of Appeals provides that appellant's brief shall contain an addendum after the signature and certificate of service that contains copies of the non-transcript documents in the record on appeal that are essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal. The rule requires that the following be included in the addendum:

- the pleadings (as defined by Rule of Civil Procedure 7(a)) on which the circuit court decided each issue. . . .
- all motions (including posttrial and postjudgment motions), responses, replies, exhibits, and related briefs, concerning the order, judgment, or ruling challenged on appeal. . . ;

- any document essential to an understanding of the case and the issues on appeal, such as a will, contract, lease, note, insurance policy, trust, or other writing;
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- defendant's written waiver of right to trial by a jury;
- in a case where there was a bench trial, the court's findings of fact and conclusions of law, if any;
- the order, judgment, decree, ruling, letter opinion, or administrative agency decision from which the appeal is taken. . . ;
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- any motion to extend the time to file the record on appeal, and any related response, reply, or exhibit;
- any order extending the time to file the record on appeal; and
- any other pleading or document in the record that is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal. . . .

Ark. Sup. Ct. R. 4-2(a)(8)(i).

In the case at bar, appellant's addendum does not contain a written reservation in writing, the trial court's approval, or the consent of the prosecuting attorney to a conditional plea. Further, appellant's addendum does not contain the trial court's order denying appellant's motion to suppress nor a complete version of the trial court's letter opinion, which is the basis for the trial court's order. Finally, appellant's addendum does not include any motion to extend the time to file the record on appeal, responses thereto, nor an order extending the time to file the record on appeal. Consequently, appellant's addendum is deficient because it does not contain the essential information showing that we have jurisdiction to entertain the appeal. Therefore, we direct appellant to cure these deficiencies by

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filing a substituted abstract, addendum, and brief within fifteen days from the date of the entry of this order.

Rebriefing ordered.

VAUGHT, C.J., and MARTIN, J., agree.