

**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CACR 09-29

STEVE BRIAN STEWART  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** January 20, 2010

APPEAL FROM THE ASHLEY  
COUNTY CIRCUIT COURT  
[NO. CR-07-73-1]

HONORABLE SAM POPE, JUDGE

REBRIEFING ORDERED

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**COURTNEY HUDSON HENRY, Judge**

A jury in Ashley County Circuit Court found appellant Steve Brian Stewart guilty of three counts of perjury, for which he received cumulative sentences totaling twenty years in prison. For reversal, appellant argues that the trial court erred by admitting into evidence the plea statement that he entered in federal court, and he contends that the trial court erred in denying his motion to enforce a plea agreement. Appellant also asserts that the evidence is not sufficient to support his convictions. We must order rebriefing due to deficiencies in appellant's abstract and addendum.

Rule 4-2(a)(5) of the Arkansas Rules of the Supreme Court and Court of Appeals provides in pertinent part:

*Abstract.* The appellant's abstract or abridgement of the transcript should consist of an impartial condensation, without comment or emphasis, of only such material parts of the testimony and colloquies between the court and

counsel and other parties as are necessary to an understanding of all questions presented to the Court for decision.

In addition, Rule 4-2(a)(8) provides in relevant part:

*Addendum.* Following the signature and certificate of service, the appellant's brief shall contain an Addendum which shall include true and legible photocopies of the order, judgment, decree, ruling, letter opinion, or Workers' Compensation opinion from which the appeal is taken, along with any other relevant pleadings, documents or exhibits essential to an understanding of the case and the Court's jurisdiction on appeal.

The rule further provides that, if the appellate court determines that the abstract or addendum is deficient, the court will afford the appellant an opportunity to cure the deficiencies by filing a substituted brief that conforms with the requirements of Rule 4-2.

In the present case, appellant contends on appeal that the trial court erred by denying his motion to enforce a plea agreement. However, appellant's addendum does not include his motion or the State's response to the motion. Additionally, appellant failed to abstract the trial court's ruling denying this motion. Appellant also argues on appeal that the evidence is not sufficient to support his convictions. Appellant's abstract, however, does not include his motion for a directed verdict made at the conclusion of all the evidence, which is required to preserve a challenge to the sufficiency of the evidence. Ark. R. Crim. P. 33.1(c). Finally, the judgment and commitment order consists of three pages, yet appellant has included only the first page of the order in the addendum. These omissions render appellant's brief deficient.

Cite as 2010 Ark. App. 67

Accordingly, we order appellant's counsel to file a substituted brief, curing the deficiencies in the abstract and addendum within fifteen days from the date of this opinion.<sup>1</sup> While we have noted the above-mentioned deficiencies, we encourage appellant's counsel to review the rule and the entire record to ensure that no additional deficiencies are present. After service of the substituted brief, the State shall have the opportunity to file a responsive brief, or it may choose to rely on the brief previously filed in this appeal.

Rebriefing ordered.

HART and KINARD, JJ., agree.

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<sup>1</sup> We direct counsel's attention to the per curiam *In re: Arkansas Supreme Court and Court of Appeals Rules 4-1, 4-2, 4-3, 4-4, 4-7, and 6-9*, 2009 Ark. 544 (per curiam) where the supreme court made sweeping changes to Rule 4-2 that are applicable to briefs filed after January 1, 2010.