

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR09-1019

JOSEPH MICHAEL HADLEY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered June 30, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NOS. CR-2005-18; CR2008-2609-A]

HONORABLE MARION
HUMPHREY, JUDGE

REMANDED TO THE TRIAL
COURT TO SETTLE AND
SUPPLEMENT THE RECORD

JOHN MAUZY PITTMAN, Judge

Joseph Michael Hadley was placed on probation in 2005 after pleading guilty to residential burglary and theft. In 2008, appellant was charged with the new offenses of aggravated robbery and theft, and the State filed a petition to revoke the previously ordered probation. After a jury trial, appellant was convicted of aggravated robbery and theft. Based on the record made at the jury trial, the trial court then found that appellant had violated the conditions of his probation, granted the petition to revoke, and sentenced appellant for the underlying crimes. Appellant appeals from the judgment of conviction, arguing that the trial court erred in admitting hearsay. Regarding the probation revocation, appellant's attorney has filed an abstract, brief, and addendum pursuant to *Anders v. California*, 368 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k), asserting that an appeal therefrom would be wholly

frivolous. Because the record is incomplete, we must remand the case to the trial court to settle the record.

We must have the entire record of proceedings in order to properly review a criminal case presented in an *Anders*, no-merit format. *Campbell v. State*, 74 Ark. App. 280, 53 S.W.3d 48 (2001) (supp. op. on denial of reh'g). If anything material to either party is omitted from the record by error or accident, we may direct that the omission or misstatement be corrected, and if necessary, that a supplemental record be certified and transmitted. Ark. R. App. P. – Civ. 6(e) (made applicable to criminal cases by Ark. R. App. P. – Crim. 4(a)). Here, the record does not contain any of the documents pertaining to the crimes to which appellant pleaded guilty in 2005 and for which he was originally placed on probation. We do not have, *inter alia*, the original criminal information, the order placing appellant on probation, or the conditions of the probation. These documents are clearly material to our review of the order of revocation: without the conditions, we cannot decide the sufficiency of the evidence to support the finding that appellant violated a condition, and, without the original order, we cannot consider the legality of the sentence imposed upon revocation.

Under these circumstances, we remand for the record to be settled and supplemented within thirty days. Upon supplementation, the clerk will set a new briefing schedule. In order that the case not be decided piecemeal, we decline to decide the appeal from the conviction until after the record is supplemented and the case rebriefed.

Cite as 2010 Ark. App. 536

Remanded to settle and supplement the record.

KINARD and GRUBER, JJ., agree.