

Cite as 2022 Ark. App. 414

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CR-21-488

MACON CARTER, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 26, 2022

APPEAL FROM THE PHILLIPS
COUNTY CIRCUIT COURT
[NO. 54CR-16-92]

HONORABLE CHALK S. MITCHELL,
JUDGE

REMANDED TO SUPPLEMENT THE
RECORD

ROBERT J. GLADWIN, Judge

Macon Carter, Jr., appeals from the July 29, 2021 sentencing order of the Phillips County Circuit Court revoking his probationary sentence.¹ Carter argues that insufficient evidence supported the revocation. We cannot reach the merits at this time because the appellate record that was lodged on February 11, 2022, is deficient. Specifically, the transcript is missing the conventionally filed exhibit “State’s Exhibit 7” consisting of three CDs that contain footage of State’s witness, Officer Carl Nelson’s, body-cam videos and the police vehicle’s dash-cam video. The prosecutor indicated on page 76 of the record transcript that the

¹On February 27, 2018, Carter pleaded guilty to committing a terroristic act for shooting into a house occupied by three people. He was sentenced to sixty months’ probation with conditions including not committing any offense punishable by imprisonment or incarceration in jail, not possessing any controlled substance or firearm, and reporting to a probation officer as directed. Carter acknowledged that he understood the conditions of his probation and that a violation of any of those conditions could result in a sentence not less than five and no more than twenty years’ imprisonment.

State would be providing a copy of the video on discs to be attached to the transcript, and the three CDs were admitted into evidence as indicated on page 77 of the record transcript.

Our clerk contacted Carter’s counsel on three separate occasions—February 14, May 12, and June 6, 2022—regarding the omission of the CDs, but to date, they have not been received.

In accordance with Rule 6(e) of the Arkansas Rules of Appellate Procedure–Civil, we order the circuit court to supplement the record on appeal with a copy of the videos constituting “State’s Exhibit 7” that were admitted by the circuit court. Rule 6(e) states in pertinent part:

Correction or Modification of the Record. If any difference arises as to whether the record truly discloses what occurred in the circuit court, the difference shall be submitted by motion to, and settled by, that court and the record shall be made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, . . . the appellate court . . . on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted.

It is incumbent on this court to review all the evidence that the circuit court had before it. We therefore order that copies of the three CD recordings be placed in the trial record along with appropriate certification by the circuit court. Accordingly, we order that the record must be supplemented with the omitted conventional exhibits within fifteen days of the entry of this order.

Remanded to supplement the record.

KLAPPENBACH and HIXSON, JJ., agree.

Don E. Etherly, for appellant.

Leslie Rutledge, Att’y Gen., by: *Jacob H. Jones*, Ass’t Att’y Gen., for appellee.