

Cite as 2023 Ark. App. 181

**ARKANSAS COURT OF APPEALS**

DIVISION III

No. CR-22-407

GEORGE GITCHELL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 29, 2023

APPEAL FROM THE HOT SPRING  
COUNTY CIRCUIT COURT  
[NO. 30CR-21-149]

HONORABLE CHRIS E WILLIAMS, JUDGE

REBRIEFING ORDERED

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**WAYMOND M. BROWN, Judge**

Appellant George Gitchell was found guilty by a Hot Spring County Circuit Court jury of second-degree battery. He was sentenced as a habitual offender to a term of thirteen years' incarceration in the Arkansas Department of Correction. On appeal, Gitchell argues that the circuit court erred (1) in denying his motion to dismiss based on an alleged discovery violation; and (2) in denying his directed-verdict motion. However, because of briefing deficiencies, we are unable to reach the merits of his arguments at this time and must order rebriefing.

A notice of appeal in this case was filed on January 7, 2022. The supreme court made electronic filing of appeals mandatory for cases in which the notice of appeal was filed on or after June 1, 2021.<sup>1</sup> As such, appellant's counsel correctly filed an electronic brief on behalf of appellant.

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<sup>1</sup>See *In re Acceptance of Records on Appeal in Elec. Format*, 2020 Ark. 421 (per curiam).

However, the brief provided is not in compliance with our briefing requirements. Rule 4-2(a)(6) of the Arkansas Rules of the Supreme Court states the following:

The appellant's brief *shall* contain a concise statement of the case and the facts without argument. The statement shall identify and discuss all material factual and procedural information contained in the record on appeal. Information in the appellate record is material if the information is essential to understand the case and to decide the issues on appeal. All material information must be supported by citations to the pages of the appellate record where the information can be found.

(Emphasis added.)

The requirement that a statement of the case be included is not only for the benefit of this court to understand the case and facts, but the failure to include necessary facts can also limit appellant's requested review of any opinion offered by this court. Arkansas Supreme Court Rule 2-3(h) states, "In no case will a rehearing petition be granted when it is based upon any fact thought to have been overlooked by the Court, unless reference has been clearly made to it in the statement of the case and the facts prescribed by Rule 4-2."

Appellant's brief presented the following statement of the case:

On June 4, 2021, Appellant was charged with Battery, Second Degree a violation of A.C.A. '5-13-202(a)(4)(c) and being a habitual offender, a violation of A.C.A. '5-4-501. (RP 08, RP 09) At trial on December 3, 2021, the jury found Appellant guilty and sentenced him to 156 months in the department of correction. Appellant assigns error in a discovery violation by the state and the denial of his motions for directed verdict. (RP 152, RP 154, RP 45) From that sentence this appeal is taken.

Here, the statement of the case provided in appellant's brief is minimal, essentially reciting only the procedural posture of the case and wholly failing to identify the material facts necessary to understand the case and decide the issues on appeal. Because of the mandatory language used by the supreme court in Rule 4-2, we cannot overlook this deficiency.

Accordingly, we order counsel to file a substituted brief on behalf of appellant, curing any deficiencies within fifteen days from the date of this order. The list of deficiencies we have noted is not to be taken as an exhaustive list, and we encourage counsel for the appellant to carefully examine the record and review our rules before resubmitting his brief. Upon the filing of a substituted brief, the State will be afforded an opportunity to revise or supplement its brief in the time prescribed by the clerk.

Rebriefing ordered.

VIRDEN and GRUBER, JJ., agree.

*Gregory Crain*, for appellant.

*Leslie Rutledge*, Att'y Gen., by: *Joseph Karl Luebke*, Ass't Att'y Gen., for appellee.