

Cite as 2024 Ark. App. 12
ARKANSAS COURT OF APPEALS
DIVISION II
No. CR-23-323

TOBY YANCY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 17, 2024

APPEAL FROM THE FRANKLIN
COUNTY CIRCUIT COURT;
NORTHERN DISTRICT
[NO. 24OCR-22-33]

HONORABLE JAMES DUNHAM,
JUDGE

REMANDED TO SETTLE AND
SUPPLEMENT THE RECORD;
REBRIEFING ORDERED; MOTION
TO WITHDRAW DENIED WITHOUT
PREJUDICE

RAYMOND R. ABRAMSON, Judge

Appellant Toby Yancy was tried by a jury and found guilty of failing to register as a sex offender. He was sentenced as a habitual offender to three years in prison. His counsel has filed a motion to withdraw, accompanied by a brief, abstract, and addendum, pursuant to *Anders v. California*, 368 U.S. 738 (1967), and Rule 4-3(b) of the Rules of the Arkansas Supreme Court and Court of Appeals, contending that an appeal in this case would be wholly frivolous. Yancy was provided with a copy of his counsel's brief and notified that he had thirty days within which to raise any points of appeal, which he has done. The State has responded to the points filed by Yancy, contending that the points cannot be reached on

appeal, are not supported by the record, or are otherwise without merit. We remand the case to the circuit court to settle the record because we have not been provided with a complete record.

As we explained in *Mace v. State*, 2011 Ark. App. 472, we must have the entire record of the trial court proceedings to be able to properly review a criminal case that is presented to us in an *Anders* no-merit format. See also *Hadley v. State*, 2010 Ark. App. 536; *Campbell v. State*, 74 Ark. App. 277, 53 S.W.3d 48 (2001) (supp. op. on denial of rehearing). If anything material to either party is omitted from the record, either by error or by accident, we may direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be certified and transmitted. *Hadley, supra*; Ark. R. App. P.-Crim. 4(a).

Here, as in *Hadley, supra*, the record itself does not contain matters that are essential for our review. While Yancy designated the entire record and all proceedings in his notice of appeal, the entire record is not currently before this court as voir dire of the prospective jurors in this case is not included in the record. Arkansas Supreme Court Administrative Order No. 4 provides that “[t]he circuit court shall require the official court reporter to make a verbatim record of all proceedings, pertaining to any matter before the court or the jury.”

We will not address this appeal until the record is settled and supplemented and the case is rebriefed. We therefore remand this case for the record to be settled and supplemented within thirty days.

We express no opinion on whether counsel should file a no-merit brief pursuant to Rule 4-3(b)(1) and *Anders* or whether the brief should be an adversarial one. If counsel elects

to file another no-merit brief, he should first determine whether there are any adverse rulings in the transcribed material following supplementation of the record. Counsel should then include in a substituted brief an explanation regarding all the adverse rulings made below as well.

After counsel has filed a substituted brief, which must take place within thirty days after supplementation of the record, our clerk will forward counsel's motion and substituted brief to Yancy, and he will have thirty days within which to raise any pro se points he chooses, or he may stand on the pro se points he has already submitted. The State will likewise be given an opportunity to file a reply brief in light of the supplemental record and in the event Yancy raises additional pro se points.

Remanded to settle and supplement the record; rebriefing ordered; motion to withdraw denied without prejudice.

GRUBER and THYER, JJ., agree.

Witt Law Firm, P.C., by: *Ernie Witt*, for appellant.

Tim Griffin, Att'y Gen., by: *Kent G. Holt*, Ass't Att'y Gen., for appellee.