

Jerry Chris JOHNSON *v.* STATE of Arkansas

CR 97-1306

964 S.W.2d 199

Supreme Court of Arkansas
Opinion delivered March 5, 1998

1. APPEAL & ERROR — POSTCONVICTION APPEAL — NOT NECESSARY FOR APPELLANT TO REQUEST RECORD BE SUPPLEMENTED WITH TRIAL TRANSCRIPT — MOTION MOOT. — Appellant's motion requesting that the supreme court allow him to supplement the record with the abstract of his previous appeal was construed to be for permission to supplement the record in the instant case with the record of the underlying trial; the motion was moot because it is not necessary for an appellant in a postconviction appeal to request that the record be supplemented with the trial transcript; the transcript of a trial which has been lodged in the appellate court on direct appeal of the judgment is a public record, as such, it need not be incorporated into the record in a postconviction appeal, which stems from the same judgment of conviction.
2. APPEAL & ERROR — COUNSEL MUST ABSTRACT RECORD OF PREVIOUS APPEAL — REBRIEFING ORDERED. — As it was necessary for appellant's counsel to abstract the record of the previous appeal,

rebriefing was ordered so that the appellant could file his original brief with an abstract which includes an abstract of the trial record.

Motion to Supplement the Record and for Extension of Time to File Reply Brief; motion moot.

James Wyatt, for appellant.

No response.

PER CURIAM. Appellant Jerry Chris Johnson has filed an appeal from an order of the trial court denying his Rule 37 petition. His brief was filed on December 29, 1997, and the State, as appellee, filed its brief on January 26, 1998. Johnson, prior to filing his reply brief, has filed this motion to supplement the record and for an extension of time to file his reply brief.

According to his motion, Johnson requests that this court allow him to supplement the record on this appeal "with the abstract of his previous appeal." We construe his request to be for permission to supplement the record in the instant case with the record of the underlying trial.

[1, 2] The motion is moot in that it is not necessary for an appellant in a postconviction appeal to request that the record be supplemented with the trial transcript. The transcript of a trial which has been lodged in the appellate court on direct appeal of the judgment is a public record. As such, it need not be incorporated into the record in a postconviction appeal which stems from the same judgment of conviction. *Drymon v. State*, 327 Ark. 375, 938 S.W.2d 825 (1997). As it will be necessary for Johnson's counsel to abstract the record of the previous appeal, however, rebriefing should occur so that Johnson can file his original brief with an abstract which includes an abstract of the trial record.

Motion moot.