

**SUPREME COURT OF ARKANSAS**

No. CR-10-545

MICKEY DAVID THOMAS  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered May 30, 2013

APPEAL FROM THE SEVIER  
COUNTY CIRCUIT COURT  
[NO. CR-2004-5-2]HONORABLE TED C. CAPEHEART,  
JUDGECERTIFIED SUPPLEMENTAL  
RECORD ORDERED; REBRIEFING  
ORDERED.**PER CURIAM**

Appellant Mickey David Thomas appeals from the Sevier County Circuit Court's order denying his petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.5 (2012). On appeal, Thomas contends that the circuit court erred in finding that his trial counsel did not render ineffective assistance of counsel (1) by failing to object to the circuit court's change of venue to Pike County and (2) by failing to introduce the testimony of Lieutenant Alex Mathis at trial or offer transcribed testimony of Lt. Mathis from a pretrial hearing to rebut an inference that Thomas had contemplated raping the victim. The State responds that Thomas's petition is without merit and contends that Thomas's petition was untimely filed, and therefore, the circuit court was without jurisdiction to entertain the petition. The State urges this court to affirm the circuit court's denial of postconviction relief. We decline to reach the merits of Thomas's argument because Thomas's brief does not comply with Arkansas Supreme Court Rule 4-2(a)(8) (2012) and he has failed to file a

sufficient record for our review pursuant to Arkansas Rule of Appellate Procedure—Civil 6 (2012).

Rule 4-2(a)(8) of the Arkansas Rules of the Supreme Court sets forth the requirement that an appellant’s brief contain an addendum. This rule provides that the addendum shall contain true and legible copies of the non-transcript documents in the record on appeal that are essential for this court “to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.” Ark. Sup. Ct. R. 4-2(a)(8) (2012). Among other specifically described items, the addendum must include “all motions (including posttrial and postjudgment motions), responses . . . concerning the order, judgment, or ruling challenged on appeal [and] [t]he order . . . from which the appeal is taken.” Ark. Sup. Ct. R. 4-2(a)(8)(A). The addendum must also include “any other pleading or document in the record that is essential for the appellate court to confirm its jurisdiction.” *Id.*

In the case at bar, Thomas filed several motions for extensions of time to file his petition. Thomas asserts that some or all of these extensions were filed in order for his newly appointed counsel, Jason Horton, to obtain the qualifications necessary to represent him. However, in reviewing Thomas’s brief and record, we have found the following deficiencies, including, but not limited to: (1) the motions for extensions of time to file his Rule 37.5 posttrial petition for relief, (2) the responses, if any, to Thomas’s motions for extensions of time to file his petition, (3) Thomas’s original petition for postconviction relief pursuant to

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Rule 37.5,<sup>1</sup> and (4) the circuit court's order appointing Jason Horton to Thomas's postconviction proceedings. The motions, responses, and order are necessary for this court to confirm jurisdiction. Ark. Sup. Ct. R. 4-2(a)(8)(A)(i). Further, our review of the record demonstrates these documents are not contained therein. The addendum shall not contain any document or material that is not in the record. Ark. Sup. Ct. R. 4-2(a)(8). However, pursuant to Ark. R. App. P.–Civ. 6(c) and (e), we can sua sponte direct the parties to supply omitted material by filing a certified, supplemental record.

Accordingly, Thomas is directed to supplement the record with our clerk within sixty days from the date of this per curiam. At that time, a briefing schedule will be set. After service of the substituted brief, the State shall have an opportunity to file a responsive brief in the time prescribed by the Supreme Court Clerk, or to rely upon the brief that was previously filed in this appeal.

While we have noted the above-mentioned deficiencies, we encourage Thomas's counsel to review our rules and the entire record to ensure that no additional deficiencies are present.

Certified supplemental record ordered; rebriefing ordered.

*Harrelson, Horton & Matteson, P.A.*, by: *Jeff Harrelson*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.

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<sup>1</sup>Thomas's original Rule 37.5 posttrial petition is contained in the record but not the addendum.