

Cite as 2018 Ark. 157
SUPREME COURT OF ARKANSAS
No. CR-17-684

ELIZABETH ROBERTS FORCE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 3, 2018

PRO SE APPEAL FROM THE
INDEPENDENCE COUNTY CIRCUIT
COURT
[NO. 32CR-10-249]

HONORABLE TIM WEAVER, JUDGE

AFFIRMED.

KAREN R. BAKER, Associate Justice

Appellant Elizabeth Roberts Force brings this appeal from the denial and dismissal by the trial court of her pro se petition for dismissal of fines, or in the alternative, for imposition of public-service work. Force’s sole argument on appeal is that the basis for her petition was a statute, identified by her as “code 16-13-703 Imprisonment,”¹ that permits a court to allow a defendant additional time for payment of fines, reduction of the amount

¹ Arkansas Code Annotated section 16-13-703(a) (Supp. 2015) provides that a court may, under certain circumstances, require a defendant sentenced to pay a fine who defaults in the payment thereof to show cause why he or she should not be imprisoned for nonpayment. Under section 16-13-703(c)(1), cause may be established by a showing that the default was not attributable to a purposeful refusal to obey the sentence of the court or to a failure on the defendant’s part to make a good-faith effort to obtain the funds required for payment.

of payment, or revocation of the unpaid portion of the fine. Because Force has failed to produce an adequate record for the appeal and the issue of the applicability of the statute to her request for relief was not raised below, the trial court's order is affirmed.

The record in this appeal does not include a copy of the judgment originally entered in Force's criminal case in which she was sentenced to pay the fine or fines at issue.² The pertinent record before us consists of Force's petition to dismiss the fines in which she contends only that she is financially unable to pay the fines and the trial court's order that disposed of the petition. The burden of providing a record sufficient to demonstrate that reversible error occurred lies with the appellant. *Spearman v. State*, 2013 Ark. 196, 427 S.W.3d 593. Without the original judgment and any subsequent orders of the trial court that reflect Force's conviction and sentences, we have no choice but to affirm the trial court's order. *See Warren v. Felts*, 2017 Ark. 237 (noting that the appellate court must affirm on appeal when the appellant has failed to demonstrate with an adequate record that the trial court erred).

² In its brief, the State asserts that Force entered a plea of guilty in 2011 to criminal offenses in case no. 32CR-10-249, was placed on probation, and ordered to pay a fine of \$2500. It further contends without documentation that probation was revoked in 2013 pursuant to a plea of guilty, and Force was sentenced to serve a term of imprisonment. The State has not asked to supplement the record with documentation of the proceedings it describes.

Moreover, even if the record contained the pertinent documents reflecting the history of Force's conviction and subsequent sentencings, we could not reach the issue raised in her brief, which concerned the applicability of the particular statute to her sentence, because the argument was not raised in the trial court. On appeal, this court reviews the decision made by the trial court based on the petition that was before it; accordingly, an appellant is limited to the scope and nature of his or her arguments below, and he or she cannot raise new arguments on appeal. See *Carter v. State*, 2015 Ark. 166, 460 S.W.3d 781.

Affirmed.

Special Justice LEE WATSON joins in this opinion.

HART, J., dissents.

KEMP, C.J., not participating.

JOSEPHINE LINKER HART, JUSTICE, dissenting. I dissent. The majority has affirmed this case ostensibly because "the record in this case does not include a copy of the judgment originally entered in Force's criminal case in which she was originally sentenced to pay the fine or fines at issue." Summary affirmance for this reason was abolished nearly two decades ago when Arkansas Supreme Court Rule 4-2 was amended to allow an appellant to fix a deficiency.

If the majority believes that it is unable to reach the merits due to missing documents, the proper disposition of this case is to decline to consider the case on the

merits and order the appellant to cure the deficiency. See, e.g., *Bryan v. City of Cotter*, 2009 Ark. 172, 303 S.W.3d 64; Ark. Sup. Ct. R. 4-2(b).¹

¹(b) Insufficiency of Appellant's Abstract or Addendum. Motions to dismiss the appeal for insufficiency of the appellant's abstract or addendum will not be recognized. Deficiencies in the appellant's abstract or addendum will ordinarily come to the court's attention and be handled in one of three ways as follows:

(1) If the appellee considers the appellant's abstract or addendum to be defective, the appellee's brief should call the deficiencies to the court's attention and may, at the appellee's option, contain a supplemental abstract or addendum. When the case is considered on its merits, the court may upon motion impose or withhold costs, including attorney's fees, to compensate either party for the other party's noncompliance with this rule. In seeking an award of costs under this paragraph, counsel must submit a statement showing the cost of the supplemental abstract or addendum and a certificate of counsel showing the amount of time that was devoted to the preparation of the supplemental abstract or addendum.

(2) If the case has not yet been submitted to the court for decision, an appellant may file a motion to supplement the abstract or addendum and file a substituted brief. Subject to the court's discretion, the court will routinely grant such a motion and give the appellant fifteen days within which to file the substituted abstract, addendum, and brief. If the appellee has already filed its brief, upon the filing of appellant's substituted abstract, addendum, and brief, the appellee will be afforded an opportunity to revise or supplement its brief, at the expense of the appellant or the appellant's counsel, as the court may, upon motion, direct.

(3) Whether or not the appellee has called attention to deficiencies in the appellant's abstract or addendum, the court may address the question at any time. If the court finds the abstract or addendum to be deficient such that the court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, addendum, and brief, at his or her own expense,

Elizabeth Roberts Force, pro se appellant.

Leslie Rutledge, Att’y Gen., by: *Jason Michael Johnson*, Ass’t Att’y Gen., for appellee.

to conform to Rule 4-2(a)(5) and (8). Mere modifications of the original brief by the appellant, as by interlineation, will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement the brief, at the expense of the appellant or the appellant's counsel, as the court may direct. If after the opportunity to cure the deficiencies, the appellant fails to file a complying abstract, addendum and brief within the prescribed time, the judgment or decree may be affirmed for noncompliance with the rule.

(4) If the appellate court determines that deficiencies or omissions in the abstract or addendum need to be corrected, but complete rebriefing is not needed, then the court will order the appellant to file a supplemental abstract or addendum within seven calendar days to provide the additional materials from the record to the members of the appellate court.

(c) Noncompliance. (1) Briefs not in compliance with the format required in Rules 4-1 and 4-2 shall not be accepted for filing by the Clerk. When a party submits a noncompliant brief on time that substantially complies with the rules governing briefs, the Clerk shall mark the brief “tendered,” grant the party a seven-day compliance extension, and return the brief to the party for correction. If the party resubmits a compliant brief within seven (7) calendar days, then the Clerk shall accept that brief for filing on the date it is received.

