

SUPREME COURT OF ARKANSAS

No. 09-614

DAMONT EWELLS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 20, 2010

PRO SE MOTION TO FILE
BELATED REPLY BRIEF [CIRCUIT
COURT OF SEBASTIAN COUNTY,
CV 06-1122, HON. JAMES O. COX,
JUDGE

APPEAL DISMISSED WITHOUT
PREJUDICE; MOTION MOOT.

PER CURIAM

On October 6, 2006, appellant was arrested and charged with possession of marijuana with intent to deliver and theft by receiving. Pursuant to Arkansas Code Annotated § 5-64-505 (Repl. 2005) appellant's 1988 Chevrolet Sport Van, \$765 in United States currency, and other property were seized as part of that arrest, and the State filed an *in rem* complaint seeking forfeiture of the seized items. The criminal charges against appellant were dismissed on appellant's motion on April 10, 2007.

On May 29, 2007, the trial court granted trial counsel's motion to withdraw from the instant case, and neither trial counsel nor appellant provided the trial court with a contact address for appellant. The State moved to dismiss the *in rem* complaint on August 15, 2007, and the trial court granted that motion. Thirteen months later, the State filed a motion under Arkansas Code Annotated § 18-28-202(a)(10) (Repl. 2003) asking the trial court to declare the seized property abandoned, and the trial court granted this motion on September 16,

2008.

Appellant filed a motion under Arkansas Rule of Criminal Procedure 15.2 (2009) on February 24, 2009, requesting that the seized property be returned to him. The trial court denied appellant's motion on March 12, 2009, and appellant filed a notice of appeal from that denial on March 25, 2009. Now before us is appellant's motion to file a belated reply brief. Because we lack jurisdiction to address appellant's appeal, that appeal is dismissed. The motion to file a belated reply brief is accordingly moot.

Arkansas Rule of Criminal Procedure 15.2(e) states:

(e) *Appellate Review.* An order granting a motion for return or restoration of seized things shall be reviewable on appeal in regular course as a final order. An order denying such a motion, or entered under Rule 15.2(f), shall be reviewable on appeal upon certification by the court having custody of such things that they are no longer needed for evidentiary purposes.

We have interpreted this requirement as one of jurisdiction, and, where the required certification is lacking, we have dismissed the appeal for want of a final order from which an appeal could be taken. *See Slots, Inc., v. State*, 342 Ark. 609, 30 S.W.3d 105 (2000). In civil appeals, this court has long had a strict policy that we would not consider an order final that is not conclusive of all claims affecting all parties unless there is an express determination by the trial court, supported by specific factual findings, that there is no just reason for delaying the appeal. *Id.* In the context of Rule 15.2(e), the certification requirement removes any need for speculation on the part of this court as to whether the seized property is no longer needed as evidence, and it keeps this court from engaging in the futility of reviewing a matter

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that may not be final. *Id.* This is true even where it seems likely that the property will not be needed as evidence in the future and where no further prosecutions are presently contemplated. *Id.*

In the instant case, the record reflects that criminal charges against appellant were dismissed for lack of evidence, and nothing in the record suggests that a future prosecution that would require the seized property as evidence is currently contemplated. Nevertheless, the record also reflects that the order denying appellant's Rule 15.2 petition lacked the certification required under Rule 15.2(e). As such, we lack jurisdiction to address appellant's appeal, and the appeal is therefore dismissed without prejudice due to lack of a final order. Appellant's motion to file a belated reply brief is moot.

Appeal dismissed without prejudice; motion moot.