

Cite as 2019 Ark. App. 128
ARKANSAS COURT OF APPEALS
DIVISION III
No. CR-18-508

RODERICK MONTGOMERY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered: February 27, 2019

APPEAL FROM THE DREW COUNTY
CIRCUIT COURT
[NO. 22CR-17-121]

HONORABLE SAM POPE, JUDGE

REMANDED TO SETTLE AND
SUPPLEMENT THE RECORD;
REBRIEFING ORDERED

RITA W. GRUBER, Chief Judge

Appellant Roderick Montgomery pleaded guilty in the Drew County Circuit Court to delivery of methamphetamine, a Class B felony; possession of a defaced firearm, a Class D felony; possession of a firearm by a felon while in the commission of a new offense, a Class B felony; and use of a communication device in the commission of a drug offense, a Class C felony. After conducting a sentencing hearing before a jury, the court entered a sentencing order in accordance with the jury's verdict sentencing appellant to ten years' imprisonment on the methamphetamine conviction; six years' imprisonment on the defaced-firearm conviction; fifteen years' imprisonment on the possession-of-a-firearm conviction; and three years' imprisonment on the communication-device conviction. The sentences were to run consecutively except for the three-year sentence for use of a

communication device. Appellant brings four points on appeal alleging errors in the sentencing hearing. Because neither the record on appeal nor the addendum contains the jury-verdict forms, we remand the case to settle and supplement the record. We also order rebriefing for appellant to correct the abstract and addendum in accordance with our opinion herein.¹

We have previously held that if anything material to either party is omitted from the record by error or accident, we may direct that the omission be corrected and that a supplemental record be certified and transmitted. *Green v. State*, 2014 Ark. App. 580, at 2. Moreover, Rule 4-2(8)(A)(i) of the Rules of the Arkansas Supreme Court and Court of Appeals specifically requires the addendum to contain the jury-verdict forms in a case in which there was a jury trial. Because the jury forms do not appear in either the record or the addendum of appellant's brief, we remand to settle and supplement the record, and we order rebriefing on this basis.

We also note that one of appellant's points on appeal involves a challenge to statements in the prosecutor's closing argument. Appellant contends that the State breached the plea agreement by alluding to additional crimes in closing argument and implying that appellant had sold drugs more than "five times" and had committed more crimes than those to which he pleaded guilty. In addition to refuting the merits of appellant's argument, the State contends that appellant did not preserve this argument.

¹We also order rebriefing in *Montgomery v. State*, 2019 Ark. App. 127, a companion case being handed down today.

Appellant's abstract of the relevant pages of the record is incomplete and misleading and thus is not adequate to enable us to review the issue. Accordingly, because this is in violation of Rule 4-2(a)(5)(B), which provides that the abstract "shall be an impartial condensation, without comment or emphasis, of the transcript," we order rebriefing of this portion of the abstract.

We remand to the circuit court to settle and supplement the record with the omitted jury-verdict forms within thirty days. Pursuant to Arkansas Supreme Court Rule 4-2(b)(3), we also order appellant to file a substituted abstract, addendum, and brief within fifteen days from the date that the supplemental record is filed. The materials listed herein are not intended as an exhaustive list of deficiencies, and we encourage appellant to carefully review the rules and ensure that no other deficiencies exist before filing his substituted abstract, addendum, and brief. If appellant fails to cure the deficiencies within the prescribed time, the orders appealed from may be affirmed for noncompliance with the rule. Ark. Sup. Ct. R. 4-2(b)(3). Finally, we are not authorizing appellant to modify his arguments.

Remanded to settle and supplement the record; rebriefing ordered.

WHITEAKER and VAUGHT, JJ., agree.

Ben Motal, for appellant.

Leslie Rutledge, Att'y Gen., by: *Michael A. Hylden*, Ass't Att'y Gen., for appellee.