

Cite as 2010 Ark. App. 811

**ARKANSAS COURT OF APPEALS**DIVISION IV  
No. CACR10-310

JAMIE FOWLER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** December 8, 2010APPEAL FROM THE YELL COUNTY  
CIRCUIT COURT  
[NO. CR-2008-33]HONORABLE JERRY DON RAMEY,  
JUDGE

REBRIEFING ORDERED

**JOHN MAUZY PITTMAN, Judge**

Appellant was sentenced as a habitual offender to sixty-five years' imprisonment after being convicted of manufacturing methamphetamine and possessing drug paraphernalia. He argues on appeal that the trial court erred in denying his motions for directed verdict, mistrial, exclusion of evidence of his prior criminal charges, and suppression of evidence seized during a search of his residence. We are unable to address the merits of these arguments at this time because part of an essential document is missing from appellant's addendum.

Arkansas Supreme Court Rule 4-2(a)(8) requires that the addendum contain the order appealed from. Here, although the entire judgment of conviction appears in the transcript of the proceedings, only a portion of the judgment is contained in the addendum submitted by appellant. The Arkansas Supreme Court has required rebriefing when key documents are missing from the addendum, *e.g.*, *Gentry v. Robinson*, 2009 Ark. 345; *Dachs v. Hendrix*, 2009

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Ark. 322, and has strongly implied that rebriefing is mandatory where essential documents are lacking. *Bryan v. City of Cotter*, 2009 Ark. 172. Consequently, we order appellant to cure the deficiency by filing a substituted abstract, brief, and addendum within fifteen days from the date of this opinion. Failure to do so within the prescribed time may result in the judgment appealed from being affirmed for noncompliance. Ark. Sup. Ct. R. 4-2(b)(3). We encourage appellate counsel, prior to filing the substituted brief, to review Arkansas Supreme Court Rules 4-2 and 4-3 to ensure that the substituted brief complies with the rules and that no additional deficiencies are present. After service of the substituted abstract, brief, and addendum, the State shall have an opportunity to revise or supplement its brief in the time prescribed by the clerk.

Rebriefing ordered.

GRUBER, J., agrees.

GLOVER, J., concurs.

DAVID M. GLOVER, Judge, concurring. I concur in order to emphasize our supreme court's mandated consequences of noncompliance with our appellate briefing rules. Today this panel orders rebriefing in two cases—*Fowler v. State*, 2010 Ark. App. 811 (only a portion of the judgment is contained in the addendum) and *Snyder v. State*, 2010 Ark. App. 817 (the petitions for revocation are not included in the addendum). The missing addendum page in *Fowler* was obviously caused by a copier jam deleting a page of the judgment (which, by the way, is available to us in the record). Likewise, the missing petitions in *Snyder* were likely an

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oversight of documents “essential to our understanding of the case” to establish jurisdiction, but otherwise nonessential, since the appellant’s challenge is limited to the sentence, not the revocation itself.

Arkansas Supreme Court Rule 4-2(a)(8) (2008) is the fulcrum for both of our rebriefing orders. Our supreme court, in *City of Cotter*, 2009 Ark. 172, by per curiam order, enunciated the bright-line rule to which our panel today respectfully adheres. It really does not matter that in that case, Justice Brown, in dissent, finding that the court had become far too strict in its application of the abstract rule, stated, “We have crafted yet another procedural pitfall for the appellate lawyer, which in my judgment is largely unnecessary.” Quite simply, the rule must be followed.

Twenty years ago, United States Magistrate Judge Jerry W. Cavaneau (Recalled)<sup>1</sup> referenced that lawyers love to talk about “pitfalls for the unwary” in an article addressing Rule 54(b) of the Arkansas Rules of Civil Procedure.<sup>2</sup> When abstracting for the Arkansas appellate courts, copier jams, basic oversights, and not adhering to the rules can be such pitfalls. I did not make the rules, but I know you can only play the game by the rules. Our rules are found in our Court Rules - Volumes 1 and 2. You really have to be careful out there, and wary.

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<sup>1</sup>A United States magistrate judge who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate judge in any judicial district by the judicial council of the circuit within which such district is located. 28 U.S.C. § 636(h).

<sup>2</sup>Jerry W. Cavaneau, *ARCP Rule Number 54(b): GOTCHA!*, THE ARKANSAS LAWYER, January 1990, at 20.