

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR 11-1032

SYLVIA ANN SPIRES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 25, 2012

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. CR-2011-103]HONORABLE BARBARA ELMORE,
JUDGEREMANDED TO SETTLE AND
SUPPLEMENT THE RECORD**ROBIN F. WYNNE, Judge**

Appellant Sylvia Ann Spires appeals from the trial court's order of restitution after she pled guilty to two counts of theft of property and one count of lottery fraud. Specifically, Spires argues that the amount of restitution is excessive. Because the record does not contain a judgment and commitment order, we remand this case to the trial court to settle and supplement the record.

The State charged Spires with the above-referenced offenses by felony information filed February 23, 2011. Spires was accused of stealing \$14,400 worth of lottery tickets from her employer, Mallard Express, and fraudulently cashing the tickets for winnings in the amount of \$9,811. Spires pled guilty to both charges, and the parties argued the issue of restitution before the trial court. The values of the tickets and winnings were undisputed. However, Spires contended that paying restitution for both the value of the stolen tickets and the amount of fraudulently claimed winnings would be excessive. The trial court disagreed

and ordered restitution in the total amount of \$24,211. The court also placed Spires on five years' supervised probation. Spires filed a timely notice of appeal from the restitution-payment order.

We decline to reach the merits of the appeal at this time because there is no judgment and commitment order in the record or addendum. Although the trial court sentenced Spires to both a period of probation and payment of restitution, there is no single order in the record that reflects both rulings. The only written order contained in the record is the payment order for restitution.

Arkansas Rule of Appellate Procedure—Civil 6(e) (2011), made applicable to criminal cases by Arkansas Rule of Appellate Procedure—Criminal 4(a)(2011), states that, if anything material to either party is omitted from the record, the appellate court may, on its own initiative, direct that the omission be corrected and that a supplemental record be certified and transmitted. Because the record does not contain the trial court's judgment and commitment order, we remand to settle and supplement the record. Appellant has thirty days from the date of this opinion to file a supplemental record that includes the missing order, after which appellant shall have fifteen days to file a substituted brief, pursuant to Arkansas Supreme Court Rule 4-2(b)(3) (2011). As always, we encourage counsel to thoroughly review the rules of appellate procedure before filing the substituted brief.

Remanded to settle and supplement the record.

VAUGHT, C.J., and GLADWIN, J., agree.