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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-181

ELMER RISNER APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** September 21, 2011 APPEAL FROM THE CONWAY COUNTY CIRCUIT COURT [NO. CR 2010-151] HONORABLE TERRY SULLIVAN, JUDGE AFFIRMED

RITA W. GRUBER, Judge

Elmer Risner appeared pro se in the district court and was convicted of three offenses under separate case numbers: TR-10-4217, careless and prohibited driving; DWI-10-206, second-offense driving while intoxicated; and CR-10-6132, refusal to submit. Now acting through counsel, he appeals the circuit court's dismissal of his appeal of the convictions for DWI and refusal to submit. He contends that the circuit court erred by finding that he failed to timely file certified records for the convictions and, accordingly, affirming them. We find no error.

The time allowed for filing an appeal from district court to circuit court is thirty days from the date the judgment was entered in the district court. Ark. R. Crim. P. 36(b). The rule further specifies:

> (c) *How Taken*. An appeal from a district court to circuit court shall be taken by filing with the clerk of the circuit court a certified record of the proceedings in the

> district court. Neither a notice of appeal nor an order granting an appeal shall be required. The record of proceedings in the district court shall include, at a minimum, a copy of the district court docket sheet and any bond or other security filed by the defendant to guarantee the defendant's appearance before the circuit court. It shall be the duty of the clerk of the district court to prepare and certify such record when the defendant files a written request to that effect with the clerk of the district court and pays any fees of the district court authorized by law therefor. The defendant shall serve a copy of the written request on the prosecuting attorney for the judicial district and shall file a certificate of such service with the district court. The defendant shall have the responsibility of filing the certified record in the office of the circuit clerk. Except as otherwise provided in subsection (d) of this rule, the circuit court shall acquire jurisdiction of the appeal upon the filing of the certified record in the office of the circuit clerk.
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> (d) *Failure of clerk to file record*. If the clerk of the district court does not prepare and certify a record for filing in the circuit court in a timely manner, the defendant may take an appeal by filing an affidavit in the office of the circuit clerk, within forty (40) days from the date of the entry of the judgment in the district court . . . . The circuit court shall acquire jurisdiction of the appeal upon the filing of the affidavit. On motion of the defendant or the prosecuting attorney, the circuit court may order the clerk of the district court to prepare, certify, and file a record in the circuit court.

Rule 36(h) states that the circuit court "may affirm" the district court's judgment if the district clerk "fails to prepare and certify a record for filing in the circuit court as provided in subsection (c) . . . and the defendant fails to move the circuit court for an order to compel the filing of the record within thirty (30) days after filing the affidavit provided in subsection (d)."

Risner filed an appeal transcript of TR-10-4217 on September 10, 2010, stating that the district court found him guilty of careless driving, fined him, and "entered the order, a copy of which is attached hereto and incorporated herein." The docket sheet for TR-10-4217, certified by the clerk of the district court and file-marked in the circuit court on August 25, 2010, reflects that Risner was found guilty of careless and prohibited driving (henceforth referred to in our opinion as careless driving). Nothing in either of these filings refers to the

charges of DWI and refusal to submit.

The State nolle-prossed the careless-driving charge at a hearing in circuit court on October 18, 2010, commenting that Risner wanted to appeal "all" despite the apparent fact that careless driving was the "only one that made it to circuit court." Risner, who was still proceeding pro se, stated, "I went downstairs, I gave them the court docket—what she handed me—and it said DWI." He added that he paid $165 and called the lady to make sure he "did everything right," and she checked her computer and told him that he had. The circuit court concluded that Risner's DWI and refusal-to-submit charges remained on his record. The court remarked, "You take the chance, Mr. Risner, by not having an attorney do this for you."

On October 27, 2010, Risner's counsel filed in the circuit court an amended notice of appeal for the three charges and sought, for purposes of the appeal, an amended and certified transcript of the trial record "to include all citations." This amended notice of appeal states that Risner could not read, that the transcript he received from the district court contained a "clerical error omitting the DWI and refusal to submit charges," and that docket sheets of the district court "reflect the appeal being filed on all three citations." Counsel also filed on October 27 amended appeal transcripts for careless driving, second-offense DWI, and refusal to submit, each certified by the district clerk and reflecting findings of guilty and fines for the convictions.

In a motion to dismiss the appeal of the two remaining charges, the State asserted that Risner had belatedly argued that it was his intention to appeal all his convictions; that the

district clerk had failed to properly certify all the convictions to the circuit clerk's office; that more than thirty days had passed since the September 10, 2010 filing of the notice of appeal; and that there had been no filing of a timely motion for a rule on the clerk. Risner's counsel prayed for denial of the motion. Attached to his response was the district court's docket sheet for DWI-10-206, which reflects the same charging document as shown on the careless-driving docket sheet filed in Risner's initial, pro-se appeal.

The State contended at a December 16, 2010 hearing in the circuit court that Risner wanted to appeal his DWI but, because the district clerk did not get the paperwork right, had appealed only the careless driving. Although agreeing that the district clerk had not correctly done the paperwork it should have done, the circuit court concluded that nothing in the Arkansas Rules of Criminal Procedure allowed a correction. The court dismissed the appeal and remanded the matter back to district court for the imposition of sentence.

The appeal before us is taken from the circuit court's order of dismissal. Risner, asserting that he filed his appeal of the district court's judgment within the thirty-day requirement of Rule 36(b), contends that the court erroneously concluded it could not hear his DWI and refusal-to-submit charges. He asserts that the circuit court acquired jurisdiction when he filed the "partial record" mentioning only careless driving and that the court should have ordered additional documents pertaining to his other charges. He relies in part on a reporter's note to Rule 36, 2007 Amendment, that a circuit court after obtaining jurisdiction "can, if necessary or desirable, order additional documents or pleadings filed in the district court to be made a part of the record on appeal." Citing Arkansas Rule of Appellate

Procedure–Criminal 1(a), under which a defendant found guilty of more than one charge at a single trial in circuit court need not file more than one appeal, he asserts that he was not required to file separate appeal transcripts to the circuit court. He maintains that the DWI and refusal-to-submit convictions were included in his appeal to the circuit court, and he asks that we direct the circuit court to order that the records relating to them be made part of the appeal record.

Risner presents no convincing argument or authority that the filing of a single appeal for multiple charges, allowed by Arkansas Rule of Appellate Procedure–Criminal 1(a) for appeals from circuit court, also applies to appeals from district court to circuit court. The procedure for appealing district-court convictions to circuit court is governed by Arkansas Rule of Criminal Procedure 36, which assigns a defendant the duty of filing with the circuit court a certified record of the district-court proceedings and requires that "a copy of the district court docket sheet" be filed. Ark. R. Crim. P. 36(c). Rule 36 expressly provides that it is a defendant's burden to ensure that his appeal from district court is perfected in a timely manner. *Williams v. State*, 2009 Ark. App. 525, 334 S.W.3d 873. The thirty-day filing requirement of Rule 36 is strictly enforced and is jurisdictional in nature. *Frolos v. State*, 2010 Ark. App. 498.

In *McKenzie v. State*, 2009 Ark. App. 712, where the certified record contained "all the important information about, and events in, the case except the date of trial/judgment," we found compliance with Rule 36 and an adequate record of proceedings. The record of proceedings must, at a minimum, be certified by the clerk and "reflect all the proceedings,

including all filed documents and motions, before the district court." *McNabb v. State*, 367 Ark. 93, 99, 238 S.W.3d 119, 123 (2006) (decided under District Court Rule 9, which, like Arkansas Rule of Criminal Procedure 36, specified that an appeal from district court to circuit court be taken by filing a "record of the proceedings" that were had in the district court).[1]

In *Ottens v. State*, 316 Ark. 1, 871 S.W.2d 329 (1994), our supreme court held that pro-se litigants must conform to the rules of procedure, which included the timely perfecting of an appeal under Arkansas Inferior Court Rule 9.[2] *See also Ross v. State*, 2011 Ark. 270 (all litigants, even those proceeding pro se, bear the responsibility for conforming to the rules of procedure or demonstrating good cause for not doing so). Furthermore, a litigant must "remain apprised of the status of his case, which includes knowing the contents of the court's docket as well as what documents have or have not been filed regarding the case." *Block v. State*, 2011 Ark. 161, at 1–2 (per curiam).

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[1]Before the adoption of Rule 36, appeals from limited jurisdiction courts to circuit court were governed by District Court Rule 9 (formerly Inferior Court Rule 9) and various statutory provisions. Ark. R. Crim. P. 36 reporter's note (2011).

[2]*Ottens*, 316 Ark. at 3, 871 S.W.2d at 330, cited the following provisions of Inferior Court Rule 9:

> (a) Time for Taking Appeal. All appeals in civil cases from inferior courts to circuit court must be filed in the office of the clerk of the particular circuit court having jurisdiction of the appeal within thirty (30) days from the date of the entry of the judgment.
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> (b) How Taken. An appeal from an inferior court to the circuit court shall be taken by filing a record of the proceedings had in the inferior court. It shall be the duty of the clerk to prepare and certify such record when requested by the appellant and the appellant shall have the responsibility of filing such record in the office of the circuit clerk.

Under the rule, perfecting an appeal is the duty of counsel rather than the clerk. *Ottens*, *supra* (citing *Edwards v. City of Conway*, 300 Ark. 135, 777 S.W.2d 583 (1989)). When Risner proceeded pro se, it was his duty—rather than that of the district clerk or the circuit clerk—to specify which charges were being appealed. Risner's inability to read did not relieve him of the responsibility of knowing what the docket sheet reflected and what documents he had filed to perfect his appeal. The court noted the risk that Risner was taking by proceeding without counsel, and it had no obligation to order supplemental documents from the district court.

The timely filing of certified district court docket sheets for the DWI and refusal-to-submit charges were jurisdictional prerequisites with respect to those charges under Rule 36(c). The docket sheet that Risner timely filed under Rule 36(b) reflects nothing but the charge of careless driving. The circuit court correctly dismissed the appeal of his remaining convictions and remanded to the district court for sentencing.

Affirmed.

GLADWIN and WYNNE, JJ., agree.