

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR12-524

AARON ANTHONY FLEMONS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 6, 2013

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT [NOS. CR-2000-827,
CR-2008-1404]

HONORABLE STEPHEN TABOR,
JUDGE

REMANDED TO SETTLE
AND SUPPLEMENT THE RECORD

LARRY D. VAUGHT, Judge

On July 6, 2001, appellant Aaron Anthony Flemons pled no contest to the charges of possession of cocaine with intent to deliver and to criminal mischief in the first degree. He was sentenced to six years' imprisonment in the Arkansas Department of Correction (ADC) with an additional suspended imposition of sentence of ten years for the cocaine-related charge and six years in the ADC plus four years' suspended imposition of sentence (SIS) in relation to the criminal-mischief charge. On April 1, 2009, Flemons pled guilty to third-degree domestic battery and was sentenced to one year of imprisonment in the ADC with an additional five years' suspended imposition of sentence.

On December 7, 2011, the State filed an amended petition to revoke Flemons's SISs alleging that Flemons had violated the terms and conditions of his suspended sentences when he allegedly committed the offenses of delivery of cocaine (on three separate occasions),

delivery of counterfeit substance, domestic battery in the third degree (on two separate occasions), and leaving the scene of a personal-injury accident, and fleeing apprehension. At the revocation hearings on December 15, 2011, and January 13, 2012, the trial court found that Flemons had violated the terms of his suspended sentences and sentenced him to a total of thirty years' imprisonment in the ADC.

In Flemons's notice of appeal and designation of the record, he appeals from the "Judgment and Commitment Order entered January 19, 2012." However, this document is neither in the record nor the addendum associated with this appeal. Flemons's attorney has also filed an abstract, brief, and addendum pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k), asserting that an appeal would be wholly frivolous. However, because the record is incomplete, we must remand the case to the trial court to settle the record.

We must have the entire record of proceedings to properly review a criminal case presented in an *Anders*, no-merit format. *Campbell v. State*, 74 Ark. App. 280, 47 S.W.3d 915 (2001). If anything material to either party is omitted from the record by error or accident, we may direct that the omission or misstatement be corrected, and if necessary, that a supplemental record be certified and transmitted. Ark. R. App. P.–Civ. 6(e) (made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a)).

Here, the record does not contain the judgment and commitment order from which the appeal is taken. Because this document is essential to our review of the case, we remand for the record to be settled and supplemented within thirty days. Upon supplementation, the

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clerk will set a new briefing schedule. In order that the case not be decided piecemeal, we decline to decide the substantive issues relating to the case until after the record is supplemented and the case rebriefed.

Remanded to settle and supplement the record.

GLOVER and WHITEAKER, JJ., agree.

Shana R. Woodard, for appellant.

Dustin McDaniel, Att'y Gen., by: *Ashley Argo Priest*, Ass't Att'y Gen., for appellee.