

Cite as 2009 Ark. 469

ARKANSAS SUPREME COURT

No. 08-554

JAMES R. MUNSON
Appellant

v.

ARKANSAS DEPARTMENT OF
CORRECTION SEX OFFENDER
SCREENING AND RISK ASSESSMENT
COMMITTEE
Appellee

Opinion Delivered October 1, 2009

PRO SE MOTION TO SUPPLEMENT
RECORD [CIRCUIT COURT OF
PULASKI COUNTY, CV 2007-13276]

MOTION DENIED.

PER CURIAM

A jury found appellant James R. Munson guilty of first-degree violation of a minor and this court affirmed the judgment. *Munson v. State*, 331 Ark. 41, 959 S.W.2d 391 (1998). The Arkansas Department of Correction Sex Offender Screening and Risk Assessment Committee (“SOSRA”) assessed appellant as a level III offender and appellant requested administrative review of the assessment. Appellant filed a pro se petition for judicial review. The Pulaski County Circuit Court dismissed the petition, and, on appeal, we dismissed the appeal, holding that no final order had been issued by SOSRA. *Munson v. Ark. Dep’t of Corr. Sex Offender Screening & Risk Assessment*, 369 Ark. 290, 253 S.W.3d 901 (2007). Appellant thereafter filed a petition requesting judicial review of a final order affirming the level and appellant’s assessment dated July 27, 2007, that the circuit court denied and dismissed. Appellant lodged an appeal of that order in this court and has now filed a motion to supplement the record.

Cite as 2009 Ark. 469

Appellant attached to his motion to supplement an affidavit dated April 22, 2009, sworn by Ms. Karen Sue Nichols, who avers as to certain statements and actions by the victim and other family members during the investigation of the charges against appellant. Appellant asserts that the affidavit would show that appellee failed to follow proper procedures and that the assigned level should be lower than that assessed. Appellant requests that the affidavit be made a part of the record for review.

Judicial review of SOSRA assessment decisions are governed by the provisions of the Arkansas Administrative Procedure Act. Ark. Code Ann. § 12-12-922(b)(7)(A)(ii) (Supp. 2007). Under the act, the record shall include the following: (1) pleadings, motions, and intermediate rulings; (2) evidence received or considered; (3) a statement of matters officially noticed; (4) offers of proof, objections, and rulings thereon; (5) proposed findings and exceptions thereto; (6) all staff memoranda or data submitted to the hearing officer or members of an agency in connection with their consideration of the case. Ark. Code Ann. § 25-15-208(a)(5) (Repl. 2002). Appellant does not show that the affidavit that he would include would fall within any of those categories in order to support its inclusion.

This court has long and consistently held that it cannot, in the exercise of its appellate jurisdiction, receive testimony or consider anything outside of the record below. *Hudson v. Kyle*, 365 Ark. 341, 229 S.W.3d 890 (2006); *see also Clark v. Pine Bluff Civil Serv. Comm'n*, 353 Ark. 810, 120 S.W.3d 541 (2003); *Miles v. State*, 350 Ark. 243, 85 S.W.3d 907 (2002); *Boswell, Tucker & Brewster v. Shirron*, 324 Ark. 276, 921 S.W.2d 580 (1996); *McLeod v. Mabry*, 206 Ark. 618, 177 S.W.2d 46 (1944). The date of the affidavit that appellant would include within the record falls after

Cite as 2009 Ark. 469

the date of the final SOSRA order. While there is a previous affidavit from Ms. Nichols that was apparently considered by the committee and included within the record, the affidavit that appellant would include could not have been considered or offered as proof. It was not a part of the record and we cannot consider it in our review. Accordingly, we deny appellant's motion.

Motion denied.