

Cite as 2009 Ark. 462

**SUPREME COURT OF ARKANSAS**

No. CR 08-1481, CR 08-1493, CR 09-60

JESSIE LLOYD MISSKELLEY, JR.;  
DAMIEN WAYNE ECHOLS; CHARLES  
JASON BALDWIN,  
APPELLANTS,

VS.

STATE OF ARKANSAS,  
APPELLEE,

Opinion Delivered October 1, 2009

REMANDED TO SETTLE THE  
RECORD.

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**PER CURIAM**

Appellants Damien Wayne Echols, Charles Jason Baldwin, and Jessie Lloyd Misskelley, Jr., have each appealed orders denying their respective petitions for writ of habeas corpus and motions for new trial under Ark. Code Ann. Sec. 16-112-201, et seq. Likewise, Appellants have lodged their respective records with this court's clerk. Although the record in *Baldwin v. State*, Case No. CR 09-60, reflects that Baldwin Exhibit Nos. 1-71 and 75-77 were filed under seal, we are unable to determine whether these exhibits were also filed under seal in *Echols v. State*, Case No. CR 08-1493 and *Misskelley v. State*, Case No. CR 08-1481. Likewise, the records in each case do not indicate whether any of the pleadings were filed under seal. Pursuant to Ark. R. App. R. - Civil 6(e), we remand the above-captioned cases to the trial court to settle the record concerning which portions of the respective records are under seal.

WILLS, J., not participating.

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DANIELSON, J., dissents.

DANIELSON, J., dissenting. The majority's decision to remand this matter to the circuit court unnecessarily deviates from this court's customary procedures and, therefore, I must dissent. First, the majority is acting *sua sponte* as none of the parties to these cases, nor any third party, has moved this court as to what portions, if any, of these records are currently under seal. Furthermore, such an inquiry at this point is a simple one. Either the records, or portions thereof, were filed under seal at the circuit court level, or they were not. If the record does not indicate that certain exhibits or pleadings were filed under seal, then it seems clear they were not and are public record. It is the duty of the parties involved in a case, not this court, to ensure that certain documents are sealed if that is their intention. To this date, no motion to seal has been filed in our court in any of these cases.

By remanding this matter to the circuit court to determine which portions of the respective records are under seal, we are providing the circuit court with a second opportunity to seal portions of those records. Again, that process vastly deviates from the typical procedure of this court. After a case is filed with this court, our clerk is then to determine if that record, or portions therein, were originally sealed by the circuit court. If so, the same will be filed under seal here. The remainder is public record unless subsequently sealed by this court pursuant to a motion. It is for these reasons that I respectfully dissent.