

ARKANSAS SUPREME COURT

No. CR 08-1394

WILBERT L. JOHNSON
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 12, 2009

PRO SE MOTIONS AND AMENDED
MOTIONS TO COMPEL AND FOR
COPY OF RECORD AND EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF [CIRCUIT COURT OF
PULASKI COUNTY, CR 2006-3233,
HON. BARRY A. SIMS, JUDGE]

MOTION TO COMPEL TREATED AS
MOTION FOR WRIT OF CERTIORARI
AND GRANTED IN PART AND
DENIED IN PART; MOTION FOR
COPY OF RECORD AND EXTENSION
OF TIME TREATED AS MOTION FOR
ACCESS TO RECORD AND
EXTENSION OF TIME AND
GRANTED.

PER CURIAM

Appellant Wilbert L. Johnson entered negotiated pleas of guilty to theft by receiving, fleeing, and violation of the Omnibus DWI Act. The judgment was entered on April 29, 2008. Appellant appears to have filed in the trial court a motion to withdraw his plea on April 28, 2008,¹ which was dismissed by order entered August 12, 2008. Appellant lodged an appeal of the order in this court and has now filed a motion to compel in which he seeks copies of the transcript and plea agreement and a motion seeking a copy of the record and an extension of time in which to file appellant's brief.

¹ The motion to withdraw the plea is not included in the record before us, but is referenced in the order.

Appellant has also filed two amended motions that request additional documents.

In appellant's motion to compel, he seeks copies of the transcript of "his trial" or the plea proceedings, and copies of the plea agreement, averring that these items are necessary for his appeal. Appellant appears to be aware that these items are not contained within the record, as he has filed a separate motion that requests a copy of the record and an extension of time to file his brief. In the amended motions, appellant seeks documents such as a police report, an affidavit and order concerning appellant's status as a pauper and appointment of counsel, a mental evaluation order, certain motions, and additional transcripts.

We treat the motion to compel as a motion for writ of certiorari to bring up the transcript of the plea hearing and other requested items. A transcript of the plea hearing is relevant to any issues concerning a withdrawal of appellant's plea. The other items appellant requests, if contained in the record, may or may not be relevant to an appeal concerning the denial of a motion to withdraw appellant's plea. The scope of our review on appeal is limited to matters that have been argued to the court below, and this court has repeatedly stated that we will not address arguments, even constitutional arguments, raised for the first time on appeal. *Jones v. Ark. Dep't Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005); *see also Dowty v. State*, 363 Ark. 1, 210 S.W.3d 850 (2005). Appellant has not demonstrated that those additional items would have any bearing upon the issues presented to the trial court in the motion to withdraw appellant's plea. Therefore we grant the motion for writ of certiorari as to the transcript of the plea hearing only, and direct that a writ of certiorari be issued to the Pulaski County Circuit Court to complete and file a certified supplemental record containing that transcript with our clerk within thirty days of the date of this order.

As to appellant's motion for a copy of the record and motion for extension of time, we note

that the record is relevant to preparation of appellant's brief for his appeal. We will not provide appellant with copies of the record at public expense, but we treat his motion as one for access to the record. The motion for access is granted. Once any supplemental record is received, our clerk is directed to provide appellant with a copy of the record and supplemental record so that he may prepare his brief. A new briefing schedule will then be set providing appellant an additional forty days in which to file his brief from the date the supplemental record is filed and the record is provided to him. The copy of the record must be returned to this court when appellant's brief is tendered or the brief will not be filed.

Motion to compel treated as motion for writ of certiorari and granted in part and denied in part; motion for copy of record and extension of time treated as motion for access to record and extension of time and granted.