

ARKANSAS SUPREME COURT

No. CR 05-1112

NOT DESIGNATED FOR PUBLICATION

CHARLES G. RODGERS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 16, 2006

PRO SE PETITION FOR WRIT OF *CERTIORARI*,
MOTIONS FOR EXTENSION OF TIME TO FILE
BRIEF, AND FOR ACCESS TO RECORD
[CIRCUIT COURT OF PHILLIPS COUNTY, CR
2002-171, HON. L. T. SIMES II, JUDGE]

PETITION FOR WRIT OF *CERTIORARI*
GRANTED; MOTION FOR EXTENSION OF
TIME TO FILE BRIEF MOOT; MOTION FOR
ACCESS TO RECORD GRANTED

PER CURIAM

Appellant Charles G. Rodgers was convicted of rape and sentenced to life imprisonment. This court affirmed. *Rodgers v. State*, ___ Ark. ___, ___ S.W.3d ___ (December 9, 2004) (CR 04-534). Appellant timely filed in the trial court a *pro se* petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied by order entered April 15, 2005. Appellant untimely filed a notice of appeal as to that order, and we granted a motion to proceed with a belated appeal. *Rodgers v. State*, CR 05-112 (Ark. November 3, 2005) (*per curiam*). We previously granted appellant's motion requesting access to the record and an extension of time to file appellant's brief. *Rodgers v. State*, CR 05-112 (Ark. January 5, 2006) (*per curiam*). Now before us are appellant's petition for a writ of *certiorari*, and motions requesting an extension of time to file appellant's brief and requesting access to the record of his trial on direct appeal and to a transcript of a hearing in the postconviction proceeding.

Appellant seeks a more complete record to be lodged. The trial court's order of April 15, 2005, denying postconviction relief, indicates that there was a hearing at which appellant and the prosecution were present, even though no evidentiary hearing was conducted. The petition for writ of *certiorari* is granted inasmuch as the trial court referred to the hearing in its order and portions of

the hearing may be pertinent to the appeal. The writ of *certiorari* is issued, returnable in thirty days, to bring up the transcript of the postconviction hearing held on appellant's Rule 37.1 petition. After the writ is returned, a new briefing schedule will be set for the appeal.

Appellant also requests the record of certain testimony from his trial, in addition to the record of the hearing referenced in the trial court's order. It is not necessary to lodge the record of the trial testimony. As public record already filed with the appellate court in the earlier appeal, appellant's trial record need not be incorporated to form a part of the record before us. *Drymon v. State*, 327 Ark. 375, 938 S.W.2d 825 (1997) (*per curiam*). Hence, the testimony of the witness at trial is already a part of the record, and there is no need to bring the record to this court.

As for appellant's request for access to the record, we recognize that an appellant must abstract those portions of the record pertinent to the appeal. The request for access to a copy of the trial record and postconviction-relief hearing is granted. Our clerk is directed to mail a copy of the hearing transcript, along with a copy of the trial record, to appellant to prepare his brief upon receipt of the hearing transcript. The copy of those portions of the record provided under this order, both that of the trial and that of the postconviction-relief hearing, in addition to the portions of the record previously provided, must be returned to this court when the brief is submitted.

Petition for writ of *certiorari* granted; motion for extension of time to file brief moot; motion for access to record granted.