

SUPREME COURT OF ARKANSAS

No. CR 11-366

JULIAN RUEDA

APPELLANT,

VS.

STATE OF ARKANSAS

APPELLEE,

Opinion Delivered March 5, 2012

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT,
[NO. CR 2006-1526-2]
HON. DAVID S. CLINGER, JUDGE,SUPPLEMENTAL ABSTRACT,
ADDENDUM, AND RECORD
ORDERED.**PER CURIAM**

Appellant Julian Rueda appeals from the circuit court's order denying his petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2009). On appeal, he contends solely that the circuit court erred in finding that his trial counsel did not render ineffective assistance of counsel by failing to file motion to dismiss asserting a speedy-trial violation. We order Rueda to submit a supplemental abstract, addendum, and record within seven calendar days to cure deficiencies in each.

Arkansas Supreme Court Rule 4-2(a)(8)(A)(i) (2011) requires that an appellant's brief include an addendum consisting of all documents essential to the appellate court's resolution of the issues on appeal, including the pleadings on which the circuit court decided each issue, and all motions, responses, replies, exhibits, and related briefs concerning the order, judgment, or ruling challenged on appeal. A review of the record reveals the following items falling

within these requirements, but missing from Rueda's addendum: his Rule 37.1 petition; the State's response and exhibits; Rueda's pretrial brief and addendum thereto; the State's responsive pretrial brief and exhibits; Rueda's reply and exhibits; the State's motion for reconsideration of the circuit court's ruling and exhibits; and Rueda's response to the reconsideration motion. We therefore direct Rueda to correct this deficiency by filing a supplemental addendum within seven calendar days from the date of this opinion. *See* Ark. Sup. Ct. R. 4-2(b)(4); *In re 4-2(b) of the Rules of the Supreme Court*, 2011 Ark. 141 (per curiam).

In addition, it appears from the parties' briefs as well as the circuit court's order that an initial ruling on the speedy-trial issue was made by the circuit court on January 28, 2010; however, no hearing reflecting that ruling is included in the record.¹ Rule 4-2(a)(5) requires that an appellant's abstract contain

the material parts of all the transcripts (stenographically reported material) in the record. Information in a transcript is material if the information is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.

Because the circuit court's initial ruling on the speedy-trial issue is material, we direct Rueda to file a supplemental abstract within seven calendar days of the date of this opinion. We further direct Rueda to file a supplemental record including this hearing; we can sua sponte direct parties to supply any omitted material by filing a certified, supplemental record. *See* Ark. R. App. P.–Civ. 6(e) (2011) (as made applicable to criminal cases by Ark. R. App.

¹The State's brief indicates that there was a January 28, 2010 hearing.

P.–Crim. 4(a) (2011)); *Williams v. State*, 2011 Ark. 389 (per curiam). The supplemental record shall also be filed within seven calendar days from the date of this opinion.

Finally, according to one of the circuit court’s orders, the circuit court later overturned its January 28 ruling: “On September 24, 2010, the Court addressed ‘State’s Motion for Reconsideration on Court’s Ruling on January 28, 2010’ and ruled in chambers with Petitioner’s attorney on the telephone that it was overruling the January 28, 2010 ruling of the Court.” While the circuit court’s final order on this issue is a part of the record, the “overruling” is not. If the September 24, 2010 chambers ruling was in fact recorded, as required by Arkansas Supreme Court Administrative Order No. 4 (2011), that transcription shall also be made a part of the record and an abstract thereof provided within the same seven calendar days, as set forth above.

We further encourage appellate counsel, prior to filing the supplemental items ordered, to review our rules to ensure that no additional deficiencies are present.

Supplemental abstract, addendum, and record ordered.

Jennifer Brooks Wiggins, for appellant.