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APPELLANT PRO SE:

JOSEPH SOWDER
Michigan City, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH KENT SOWDER,)
)
 Appellant – Petitioner,)
)
 vs.) No. 02A03-0907-CV-350
)
 STATE OF INDIANA,)
)
 Appellee – Respondent.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Special Judge
Cause No. 02D04-0602-FB-24

December 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Joseph Sowder, an inmate at Indiana State Prison (“ISP”), filed a Request for Marriage License in Allen Superior Court, the court that sentenced him to prison. Sowder appeals the trial court’s denial of his request. Concluding Sowder has failed to provide a sufficient record upon which we can review the trial court’s decision, we dismiss the appeal.

Sowder was sentenced to ISP in 2007.¹ When Sowder and his fiancée decided they wished to be married, Sowder received “Instructions for Marriage at ISP” from the prison chaplain. Sowder then contacted the Allen County Clerk for instructions on how to obtain a marriage license and was told he would need an order from the trial court ordering the Clerk to issue a marriage license.² Sowder then filed a Request for Marriage License with the trial court. The trial court denied the request as “unsupported.” Appellant’s Brief at 6. Sowder filed a timely notice of appeal with the trial court and a timely Appellant’s Brief with this court. His Appendix, however, was not accepted for filing by the Clerk of this court, which issued a notice of defect with respect to the Appendix. Sowder unsuccessfully attempted to remedy the defect. The Clerk again notified Sowder of the defect, but he has taken no further steps to cure the defect. As a result, his Appendix has not been filed and transmitted to this court.³

¹ The facts related herein are taken from the Chronological Case Summary attached to the Allen County Clerk’s Notice of Completion of Clerk’s Record and from Sowder’s brief.

² Presumably, a court order is necessary because Sowder is unable to be present in person to apply for the marriage license. See Marriage License Information, <http://www.allencounty.us/marriage-licenses> (last visited December 14, 2009).

³ The State has filed a Notice of Non-Involvement indicating Sowder’s Request for Marriage License was filed without naming any person or entity as respondent. The State has therefore not filed a brief.

Indiana Appellate Rule 49(B) provides that “[a]ny party’s failure to include any item in an Appendix shall not waive any issue or argument.” However, it is the appellant’s duty to provide this court with a record that enables us to review the claims of error. Lenhardt Tool & Die Co., Inc. v. Lumpe, 703 N.E.2d 1079, 1084 (Ind. Ct. App. 1998), trans. denied; see also App. R. 49(A) (“The appellant shall file its Appendix with its appellant’s brief.”). Although we prefer to decide cases on their merits, where an appellant fails to substantially comply with the rules of appellate procedure, then dismissal of the appeal is warranted. Hughes v. King, 808 N.E.2d 146, 147 (Ind. Ct. App. 2004); but see Johnson v. State, 756 N.E.2d 965, 967 (Ind. 2001) (holding where an appellant in a criminal appeal fails to file an appendix, the better practice is to order compliance within a reasonable time and only then to consider more stringent measures such as dismissal).

Sowder was given two opportunities to tender an Appendix that complies with the Appellate Rules. The consequence of his failure to do so is that his Appendix was not filed. We therefore do not have in the record before us a copy of his Request for Marriage License and cannot properly review the trial court’s decision that his request was “unsupported.” Accordingly, we dismiss this appeal.

Dismissed.

BAKER, C.J., and BAILEY, J., concur.