ARKANSAS SUPREME COURT

No. CR 05-1112

NOT DESIGNATED FOR PUBLICATION

CHARLES G. RODGERS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 1, 2006

PRO SE MOTIONS TO SUPPLEMENT RECORD, AND FOR EXTENSION OF TIME TO FILE BRIEF OR STAY APPEAL TO SETTLE RECORD [CIRCUIT COURT OF PHILLIPS COUNTY, CR 2002-171, HON. L. T. SIMES II, JUDGE]

MOTION TO SUPPLEMENT RECORD DENIED; MOTION TO EXTEND TIME TO FILE BRIEF OR STAY APPEAL TO SETTLE RECORD GRANTED IN PART AND DENIED IN PART; WRIT OF *CERTIORARI* ISSUED

PER CURIAM

Appellant Charles G. Rodgers was convicted of rape and sentenced to life imprisonment. This court affirmed. *Rodgers v. State*, 360 Ark. 24, ___ S.W.3d ___ (2004). 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. He 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 05-1112 (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 05-1112 (Ark. January 5, 2006) (*per curiam*). Following his review of the record, appellant filed a petition for a writ of *certiorari*, and requested access to the record of his trial on direct appeal and to a transcript of a hearing in the

postconviction proceeding. We granted the writ and the motion for access. *Rodgers v. State*, CR 05-1112 (Ark. March 16, 2006) (*per curiam*).

Now before us are two *pro se* motions. Appellant seeks in his first motion to supplement the record with copies of documents that he offers; appellant claims one of the documents is an affidavit of probable cause supporting another of the documents, an arrest warrant he asserts was issued on June 8, 2002, the date trial counsel argued was appellant's date of arrest. The remaining document is an investigative officer's report. Appellant contends in that motion that, because the documents were not provided with the supplemental record provided to this court on the original writ, it would be pointless to request that the circuit clerk provide certified copies. He seeks now to have these uncertified copies included.

In appellant's second motion, he requests an extension of time, or a stay in the alternative. He makes this request in conjunction with his previous motion and an additional request that this court order an evidentiary hearing in the trial court for the purpose of settling the record.

If the circuit clerk cannot provide certified copies of the documents, then the documents are not contained within the record. This court does not consider matters outside of the record. *Miles v. State*, 350 Ark. 243, 85 S.W.3d 907 (2002). If the documents that appellant wishes to have now included in the record were not a part of the record before the trial court, the trial court did not have those documents to consider in reaching its decision. The documents would not be appropriately considered in our review. We accordingly deny appellant's motion seeking to supplement the record with the uncertified documents.

Appellant's second motion, however, indicates that he is not certain whether the documents were or were not filed with the trial court. We do not grant appellant's request for an evidentiary

hearing to determine whether the documents should have been included in the record. As noted, if the documents were not included in the record and before the trial court to consider, then those documents are not properly included in our review. We do, however, issue a writ of *certiorari* directing the circuit clerk to search the record and provide within thirty days of the date of this opinion either a supplement to the record including any of the three documents in question that are, in fact, contained in the record, or written confirmation that the record does not include those documents. As to appellant's request for an extension, we grant the extension and his brief is now due in this court no later than fourteen days after the writ of *certiorari* is returned.

Motion to supplement record denied; motion to extend time to file brief or stay appeal to settle record granted in part and denied in part; writ of *certiorari* issued.