

COURT OF APPEALS OF THE FIFTH DISTRICT OF TEXAS AT DALLAS

Branden Keith Wilson v. The State of Texas

No. 05-12-01020-CR · No. 05-12-01020-CR · Decided January 17, 2013

SUMMARY

The Texas Court of Appeals for the Fifth District at Dallas ordered the trial court to conduct a hearing concerning the appellant's missing brief. The court abated the appeal and directed the trial court to determine whether the appellant wished to pursue the appeal, was indigent, or had been abandoned by retained counsel, and to transmit findings and recommendations within thirty days.

CASE DETAILS

COURT	Court of Appeals of the Fifth District of Texas at Dallas
WRITING FOR THE COURT	Lana Myers
JURISDICTION	Texas
DECIDED	January 17, 2013
DOCKET	05-12-01020-CR
DISPOSITION	remanded
PROCEDURAL POSTURE	On appeal from the 296th Judicial District Court of Collin County, Texas, after appellant's brief was not filed. The appellate court abated the appeal and ordered the trial court to conduct a hearing regarding the failure to file the brief and appellant's desire and ability to prosecute the appeal.
PRECEDENTIAL VALUE	Published order; precedential status is not otherwise specified in the opinion text.
PARTIES	Branden Keith Wilson v. The State of Texas

TOPICS

appellate procedure criminal procedure right to counsel

PRACTICE AREAS

Texas criminal appellate procedure criminal procedure right to counsel

QUESTIONS PRESENTED

1. What action should the appellate court take when an appellant's brief has not been filed and the record does not establish whether the appellant wishes to continue the appeal or lacks effective representation?

HOLDINGS

1. When an appellant's brief has not been filed, the trial court must conduct a hearing and make findings and recommendations concerning the appellant's desire to prosecute the appeal, indigency, and possible abandonment by retained counsel.
2. If the trial court cannot obtain appellant's presence at the hearing, it must conduct the hearing in appellant's absence; if appellant is indigent, the trial court must take measures necessary to assure effective representation, which may include appointing new counsel.

KEY QUOTATIONS

“If appellant is indigent, the trial court is ORDERED to take such measures as may be necessary to assure effective representation, which may include appointment of new counsel.”

“This appeal is ABATED to allow the trial court to comply with the above order.”

FACTUAL BACKGROUND

Appellant's brief had not been filed in the pending criminal appeal. The appellate court required the trial court to determine whether appellant wished to prosecute the appeal, whether appellant was indigent, and, if he was not indigent, whether retained counsel had abandoned the appeal. If appellant was indigent, the trial court was directed to take measures necessary to assure effective representation, potentially including appointment of new counsel.

PROCEDURAL HISTORY

The appeal arose from Trial Court Cause No. 296-80603-2012 in the 296th Judicial District Court of Collin County. Because appellant's brief had not been filed, the Court of Appeals ordered the trial court to conduct a hearing, make findings and recommendations concerning prosecution of the appeal and representation, and transmit the resulting record within thirty days. The appeal was abated pending compliance with that order.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must conduct a hearing to determine why appellant's brief has not been filed; determine whether appellant desires to prosecute the appeal, whether appellant is indigent, and, if not indigent, whether retained counsel has abandoned the appeal; conduct the hearing in appellant's absence if necessary; assure effective representation if appellant is indigent, potentially by appointing new counsel; and transmit the proceedings record, including written findings and recommendations, to the Court of Appeals within thirty days. The appeal is abated and is to be reinstated thirty days after the order or when the findings are received, whichever is earlier.

CASES CITED

- Meza v. State, 742 S.W.2d 708 (Tex. App.—Corpus Christi 1987, no pet.) (per curiam)

OPINION

PER CURIAM.

Order entered January 17, 2013 In The Court of Appeals Fifth District of Texas at Dallas No. 05-12-01020-CR BRANDEN KEITH WILSON, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 296th Judicial District Court Collin County, Texas Trial Court Cause No. 296-80603-2012 ORDER The Court ORDERS the trial court to conduct a hearing to determine why appellant's brief has not been filed.

In this regard, the trial court shall make appropriate findings and recommendations and determine whether appellant desires to prosecute the appeal, whether appellant is indigent, or if not indigent, whether retained counsel has abandoned the appeal. See TEX. R. APP. P. 38.8(b). If the trial court cannot obtain appellant's presence at the hearing, the trial court shall conduct the hearing in appellant's absence.

See Meza v. State, 742 S.W.2d 708 (Tex. App.—Corpus Christi 1987, no pet.) (per curiam). If appellant is indigent, the trial court is ORDERED to take such measures as may be necessary to assure effective representation, which may include appointment of new counsel.

We ORDER the trial court to transmit a record of the proceedings, which shall include written findings and recommendations, to this Court within THIRTY DAYS of the date of this order. This appeal is ABATED to allow the trial court to comply with the above order.

The appeal shall be reinstated thirty days from the date of this order or when the findings are received, whichever is earlier. /s/ LANA MYERS JUSTICE