

FOURTEENTH COURT OF APPEALS OF TEXAS

Carlos Michael Lopez v. State

Carlos Michael Lopez v. State · No. Nos. 14-19-00380-CR, 14-19-00381-CR · Decided January 28, 2020

SUMMARY

This concurring opinion addresses whether a Texas appellate court may involuntarily dismiss a criminal appeal before submission when the State claims the defendant waived the right to appeal. The opinion concludes that Texas Rule of Appellate Procedure 42.4 authorizes involuntary dismissal on the State's motion only when the appellant has escaped from custody, but recognizes that a court may dismiss for lack of jurisdiction after providing procedural due process and adequate notice. The concurrence urges the Texas Court of Criminal Appeals to amend Rule 42 to establish a procedure comparable to civil involuntary-dismissal practice.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
WRITING FOR THE COURT	Charles A. Spain; Christopher; Poissant
JURISDICTION	Texas
DECIDED	January 28, 2020
DOCKET	Nos. 14-19-00380-CR, 14-19-00381-CR
DISPOSITION	dismissed
PROCEDURAL POSTURE	The State moved to involuntarily dismiss two criminal appeals before submission, asserting that Lopez had waived his right to appeal. Lopez moved to strike the State's motions. The court instead gave notice of involuntary dismissal on its own initiative and dismissed the appeals.
PRECEDENTIAL VALUE	Published concurring opinion; the opinion is separately authored and does not itself represent the majority holding.
PARTIES	Carlos Michael Lopez v. The State of Texas

TOPICS

[appellate procedure](#) [appellate jurisdiction](#) [criminal procedure](#) [procedural due process](#)

PRACTICE AREAS

[appellate procedure](#) [criminal procedure](#) [constitutional law](#)

QUESTIONS PRESENTED

1. Whether Texas Rule of Appellate Procedure 42.4 authorizes the State to move for involuntary dismissal of a criminal appeal on grounds other than the appellant's escape from custody.
2. What procedure a Texas court of appeals should follow when dismissal of a criminal appeal is necessary before submission of briefs, including when the court believes it lacks jurisdiction.
3. Whether procedural due process and due course of law require notice and an opportunity to respond before an appellate court involuntarily dismisses a criminal appeal.

HOLDINGS

1. Texas Rule of Appellate Procedure 42.4 authorizes the State to move for involuntary dismissal of a criminal appeal only when the appellant has escaped from custody and has not returned within ten days; it does not authorize the State's motion based on an alleged waiver of the right to appeal.
2. In the absence of a rule specifically authorizing the State's motion, a court of appeals should provide procedural due process and due course of law, including appropriate notice, before involuntarily dismissing a criminal appeal.

KEY QUOTATIONS

“The Rule does not authorize involuntary dismissal of an appeal in a criminal case in any other circumstance.” (2)

“The central aim of due process is to assure fair process when the government imposes a burden on the individual.” (5)

“Efficiency does not supersede the judiciary’s responsibility to afford constitutional due process.” (5)

FACTUAL BACKGROUND

The State alleged that Lopez waived his right to appeal in exchange for the State waiving its right to jury trials. After Lopez filed notices of appeal, the State moved for involuntary dismissal before briefing, asserting that the alleged waiver deprived the court of appellate jurisdiction. The appellate court independently provided notice of possible involuntary dismissal and ultimately dismissed the appeals.

PROCEDURAL HISTORY

Lopez appealed from the 262nd District Court of Harris County in trial court causes 1564443 and 1564444. The State sought dismissal based on an alleged waiver of the right to appeal arising from an agreement in which the State waived jury trials. The Fourteenth Court of Appeals reinstated the appeals, disposed of the motions, and dismissed the appeals after providing notice of involuntary dismissal; Justice Spain concurred.

DISPOSITION

dismissed

CASES CITED

- Sutherland v. State, 132 S.W.3d 510, 511–12 (Tex. App.—Houston [1st Dist.] 2004, no pet.)
- Cuellar v. State, 13 S.W.3d 449, 452 (Tex. App.—Corpus Christi 2000)
- Cockrum v. State, No. 04-99-00005-CR, 2000 Tex. App. LEXIS 4107, at *1–3 (Tex. App.—San Antonio June 21, 2000) (not designated for publication)
- Carson v. State, 559 S.W.3d 489 (Tex. Crim. App. 2018)
- Jones v. State, 488 S.W.3d 801, 805 (Tex. Crim. App. 2016)
- Ex parte De Leon, 400 S.W.3d 83, 89 (Tex. Crim. App. 2013)
- Monreal v. State, 99 S.W.3d 615, 617 (Tex. Crim. App. 2003)
- Melton v. State, 987 S.W.2d 72, 75 n.2 (Tex. App.—Dallas 1998)
- Slaton v. State, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998)
- Theus v. State, 524 S.W.3d 765, 766 (Tex. App.—Houston [14th Dist.] 2017, no pet.)
- Ex parte Lewis, No. 14-16-00629-CR, 2017 WL 6559647, at *2 (Tex. App.—Houston [14th Dist.] Dec. 21, 2017, pet. ref'd)
- Marsh v. State, 444 S.W.3d 654, 660 (Tex. Crim. App. 2014)
- Rodriguez v. State, 970 S.W.2d 133, 135 (Tex. App.—Amarillo 1998)
- Calderon v. State, No. 07-97-0417-CR, 1998 Tex. App. LEXIS 2898, at *3–7 (Tex. App.—Amarillo May 15, 1998) (not designated for publication)
- Tippet v. State, 2 S.W.3d 462, 463 (Tex. App.—San Antonio 1999)
- Coronado v. State, No. 07-11-00302-CR, 2012 Tex. App. LEXIS 334, at *2 (Tex. App.—Amarillo Jan. 13, 2012) (not designated for publication)
- Herrera v. State, No. 07-07-0299-CR, 2008 Tex. App. LEXIS 171, at *3–5 (Tex. App.—Amarillo Jan. 10, 2008) (not designated for publication)
- Berry v. State, 156 S.W. 626, 635 (Tex. Crim. App. 1913)