

COURT OF APPEALS OF TEXAS, TWELFTH COURT OF APPEALS
DISTRICT, TYLER

Reginald Montrelia Wickware v. The State of Texas

No. 12-22-00180-CR · No. 12-22-00180-CR · Decided January 20, 2023

SUMMARY

The Twelfth Court of Appeals ordered the trial court to determine whether Reginald Montrelia Wickware was indigent and entitled to receive the reporter's record without charge. The court also required findings regarding payment arrangements if he was not entitled to a free record and directed the filing of supplemental records and a hearing transcript.

CASE DETAILS

COURT	Court of Appeals of Texas, Twelfth Court of Appeals District, Tyler
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Texas
DECIDED	January 20, 2023
DOCKET	12-22-00180-CR
DISPOSITION	remanded
PROCEDURAL POSTURE	Appellant appealed his conviction for aggravated sexual assault of a child. During the appeal, the appellate record was delayed because of uncertainty over payment of the reporter's-record preparation fee.
PRECEDENTIAL VALUE	published
PARTIES	Reginald Montrelia Wickware v. The State of Texas

TOPICS

appellate procedure

criminal procedure

PRACTICE AREAS

criminal appellate procedure

indigency and access to appellate records

QUESTIONS PRESENTED

- Whether the trial court must determine whether Appellant is indigent and entitled to receive the reporter's record without charge when the appellate record is delayed because of nonpayment.

2. Whether indigency for appointment of counsel establishes indigency for purposes of obtaining a free appellate record.

HOLDINGS

1. A determination of indigency for appointment of counsel and a determination of indigency for obtaining a free appellate record are discrete inquiries; a defendant may be indigent for one purpose without being indigent for the other.
2. The trial court must conduct a hearing and make written findings and conclusions concerning whether Appellant is entitled to a reporter's record without charge and, if not, when he will make acceptable payment arrangements.

KEY QUOTATIONS

“Determining indigency for purposes of appointing counsel and indigency for purposes of obtaining a free record are discrete inquiries[.]” (at 5-6)

“A defendant can be found indigent for one purpose without being found indigent for the other.” (at 6)

FACTUAL BACKGROUND

Wickware was convicted of aggravated sexual assault of a child and appealed. He had been found indigent in the trial court, but after the trial court appointed appellate counsel, his family retained private counsel. The reporter's record was delayed because the preparation fee had not been paid, and the record did not establish whether Wickware had sought or qualified for a free appellate record.

PROCEDURAL HISTORY

The trial court initially appointed counsel for Appellant, but Appellant later retained Niles Illich. Although Appellant was found indigent in the trial court, the clerk's record did not show that he had moved for a free appellate record or that the trial court had determined him indigent for purposes of obtaining one. The court reporter filed multiple motions for extensions because the required preparation fee had not been paid. The appellate court ordered the trial court to conduct an indigency hearing and make written findings regarding Appellant's entitlement to a free reporter's record or, alternatively, acceptable payment arrangements.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court was ordered to conduct a hearing on or before February 2, 2023, and make written findings of fact and conclusions of law concerning whether Appellant was indigent and entitled to a reporter's record without charge and, if not, the date he would make acceptable payment arrangements. A supplemental clerk's record containing the findings, supporting documentation, and orders, and a reporter's record of the hearing were ordered to be filed with the appellate court by February 9, 2023.

CASES CITED

- McFatrige v. State, 309 S.W.3d 1, 5-6 (Tex. Crim. App. 2010)
- Goley v. State, No. 07-18-00145-CR, 2018 WL 3766796, at *1-2 (Tex. App.—Amarillo Aug. 8, 2018, order) (per curiam)

OPINION

PER CURIAM.

NO. 12-22-00180-CR IN THE COURT OF APPEALS TWELFTH COURT OF APPEALS DISTRICT TYLER, TEXAS REGINALD MONTRELIA § APPEAL FROM THE 114TH WICKWARE, APPELLANT § JUDICIAL DISTRICT COURT V. THE STATE OF TEXAS, § SMITH COUNTY, TEXAS APPELLEE PER CURIAM ORDER Reginald Montrelia Wickware appeals from his conviction for aggravated sexual assault of a child. According to the case information sheet from the Smith County District Clerk's Office, Appellant was found indigent in the trial court.

Although the trial court appointed counsel to represent Appellant on appeal, Appellant retained counsel. In his letter requesting preparation of the reporter's record, Appellant's retained counsel, Niles Illich, stated, "Defendant will make arrangements with the court reporter to pay the court reporter's fee." The reporter's record was originally due on October 20.

On January 9, 2023, the reporter filed a fourth motion for extension of time to file the record, in which she informed this Court that the delay in filing the record is due to non-payment of the required preparation fee. See TEX. R. APP. P. 35.3(b)(3).

In response, Illich explained that the trial court initially appointed counsel, but Appellant's family retained Illich and Appellant remains indigent. On January 18, the reporter filed a fifth motion for extension, in which she again explained the need for more time to prepare the record due to payment issues. She attached an email to her motion, in which the trial court coordinator stated that Appellant would have to pay for his own record.

If an appellant is unable to pay for the appellate record, he may, by motion and affidavit, ask the trial court to furnish the record without charge. TEX. R. APP. P. 20.2. For purposes of qualifying as indigent to receive a free copy of the appellate record, a defendant must be unable to pay or give security for the record. McFatrige v. State, 309 S.W.3d 1, 5 (Tex.

Crim. App. 2010). Indigency determinations are made when raised and are decided on a case-by-case basis. Id. "Determining indigency for purposes of appointing counsel and indigency for purposes of obtaining a free record are discrete inquiries[.]" Id. at 5-6. "A defendant can be found indigent for one purpose without being found indigent for the other." Id. at 6.

Here, the clerk's record does not reflect that Appellant filed a motion requesting a free appellate record or that the trial court found Appellant indigent for purposes of obtaining a free record. Accordingly, It is ORDERED that the Honorable Austin R. Jackson shall conduct a hearing, on or before February 2, 2023, and make written findings of fact and conclusions of law as to whether (1) Appellant is indigent and entitled to a copy of the reporter's record without charge, and (2) if Appellant is not so entitled, the date he will make acceptable payment arrangements for the reporter's record.¹ It is FURTHER ORDERED that a supplemental clerk's record including any necessary findings of fact and conclusions of law, along with any supporting documentation and orders, be certified to this Court on or before February 9, 2023.

It is FURTHER ORDERED that the court reporter file a reporter's record of the hearing on or before February 9, 2023. GIVEN UNDER MY HAND AND SEAL OF SAID COURT, at my office this 20th day of January 2023, A.D. By: _____ KATRINA MCCLENNY, CLERK 1 See TEX. R. APP. P. 37.3(a)(2) (if reporter's record has not been timely filed, appellate court must make whatever order is appropriate to avoid further delay and to preserve parties' rights); see also Goley v. State, No. 07- 18-00145-CR, 2018 WL 3766796, at *1-2 (Tex.

App.—Amarillo Aug. 8, 2018, order) (per curiam) (where appellant was declared indigent and appointed counsel, but later retained counsel, appellate court remanded for trial court to consider whether appellant was entitled to free reporter's record).