

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

Sergio Manuel Nava, Jr. v. State

Nava v. State · No. 05-14-00242-CR · Decided October 20, 2014

SUMMARY

The Fifth District Court of Appeals in Dallas denied the appellant’s second motion to extend the time to file his brief. The court abated the appeal and ordered the trial court to conduct a hearing regarding prosecution of the appeal, indigency, and potential abandonment by retained counsel, with findings and recommendations due within thirty days.

CASE DETAILS

COURT	Court of Appeals for the Fifth District of Texas at Dallas
WRITING FOR THE COURT	Lana Myers
JURISDICTION	Texas
DECIDED	October 20, 2014
DOCKET	05-14-00242-CR
DISPOSITION	remanded
PROCEDURAL POSTURE	Criminal appeal in which appellant sought a second extension of time to file his brief. The appellate court denied the extension, abated the appeal, and ordered the trial court to conduct a hearing concerning the failure to file the brief, appellant's desire to prosecute, indigency, and possible abandonment by retained counsel.
PRECEDENTIAL VALUE	published
PARTIES	Sergio Manuel Nava, Jr. v. The State of Texas

TOPICS

- appellate procedure
- right to counsel
- criminal procedure

PRACTICE AREAS

- criminal appellate procedure
- right to counsel

QUESTIONS PRESENTED

- Whether appellant's second motion to extend the time to file his appellate brief should be granted.

2. What procedural measures were required when an appellant's brief had not been filed, including a hearing concerning prosecution of the appeal, indigency, and possible counsel abandonment.

HOLDINGS

1. The second motion to extend the time to file appellant's brief was denied.
2. Under Texas Rule of Appellate Procedure 38.8(b), the trial court must conduct a hearing to determine why the appellant's brief has not been filed, whether the appellant desires to prosecute the appeal, whether the appellant is indigent, and, if not indigent, whether retained counsel has abandoned the appeal. If the appellant is indigent, the trial court must take measures necessary to assure effective representation, which may include appointing new counsel.

FACTUAL BACKGROUND

Appellant's brief had not been filed, and he moved a second time for an extension of time to file it. The appellate court required the trial court to determine whether appellant wished to prosecute the appeal, whether he was indigent, and whether retained counsel had abandoned the appeal.

PROCEDURAL HISTORY

The appeal was pending from the County Court at Law of Rockwall County, Texas. After appellant's brief was not filed and appellant submitted a second motion for extension, the court of appeals denied the motion and ordered the trial court to conduct a hearing and transmit findings and recommendations 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; whether appellant desires to prosecute the appeal; whether appellant is indigent; and, if appellant is not indigent, whether retained counsel has abandoned the appeal. If appellant is indigent, the trial court must take measures necessary to assure effective representation, potentially including appointment of new counsel. If appellant cannot be present, the hearing may proceed in appellant's absence. The trial court must transmit a record containing written findings and recommendations to the appellate court 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 October 20, 2014 In The Court of Appeals Fifth District of Texas at Dallas No. 05-14-00242-CR SERGIO MANUEL NAVA, JR., Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the County Court at Law Rockwall County, Texas Trial Court Cause No. CR12-1388 ORDER Appellant's October 16, 2014 second motion to extend the time to file appellant's brief is DENIED.

We ORDER 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