

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Hector Manuel Rodriguez v. The State of Texas

Nos. 01-24-00728-CR, 01-24-00729-CR (Tex. App.—Houston [1st Dist.] May 5, 2026) (mem. op.) · No. Nos. 01-24-00728-CR, 01-24-00729-CR · Decided May 5, 2026

SUMMARY

The First Court of Appeals of Texas affirmed the judgments sentencing Hector Manuel Rodriguez to concurrent 30-year terms in two child-sexual-assault cases. The court declined to abate the appeals to permit out-of-time motions for new trial, concluding that alleged ineffective assistance of trial counsel could be raised through a post-conviction habeas corpus proceeding and that the circumstances were not truly extraordinary.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Andrew Johnson; Rivas-Molloy; Johnson; Dokupil
JURISDICTION	Court of Appeals for the First District of Texas
DECIDED	May 5, 2026
DOCKET	Nos. 01-24-00728-CR, 01-24-00729-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Rodriguez appealed the judgments in two criminal cases and requested abatement of the appeals and remand to permit him to file out-of-time motions for new trial. He asserted that waivers of his right to file motions for new trial were involuntary and that he intended to raise ineffective assistance of trial counsel.
STANDARD OF REVIEW	The court applied the governing legal standards for suspension of appellate rules and requests for out-of-time motions for new trial; it did not decide the validity of Rodriguez's waivers or the merits of his ineffective-assistance claim.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; marked Do not publish under Texas Rule of Appellate Procedure 47.2(b).
PARTIES	Hector Manuel Rodriguez v. The State of Texas

TOPICS

appellate procedure

post-conviction relief

ineffective assistance

criminal procedure

PRACTICE AREAS

Texas criminal appellate procedure

criminal post-conviction relief

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the court of appeals should suspend the applicable filing deadline under Texas Rule of Appellate Procedure 2 and remand to permit Rodriguez to file out-of-time motions for new trial.
2. Whether the asserted ineffective assistance of trial counsel constituted truly extraordinary circumstances warranting abatement and remand.
3. Whether the court should decide whether Rodriguez's waivers of the right to file motions for new trial were invalid.

HOLDINGS

1. An intermediate appellate court should not use Rule 2 to allow out-of-time motions for new trial after the appeal has been perfected and the record filed absent truly extraordinary circumstances.
2. An ineffective-assistance claim that can be developed in a post-conviction writ of habeas corpus does not, by itself, constitute the truly extraordinary circumstance necessary for an appellate court to order an out-of-time motion for new trial.
3. The court did not decide whether Rodriguez signed invalid waivers of his right to file motions for new trial.

KEY QUOTATIONS

“the ‘Court of Criminal Appeals has instructed intermediate appellate courts not to allow defendants to file out-of-time motions for new trial ‘absent truly extraordinary circumstances’” (at 4)

“Rule 2 ‘‘does not authorize courts of appeals to reach back, after the appeal has been perfected and the record filed, and alter the course of events at the trial court level.’” (at 4)

“trial counsel’s alleged ineffectiveness ‘can be raised in a post-conviction writ of habeas corpus, which is the preferred vehicle for raising a complaint regarding trial counsel’s performance.’” (at 4)

FACTUAL BACKGROUND

Rodriguez pleaded guilty in two Fort Bend County cases under agreements that did not include punishment recommendations. After a punishment hearing at which the victim testified and Rodriguez presented evidence concerning his military-related mental-health issues, the trial court imposed concurrent thirty-year sentences. Rodriguez contended that written waivers of motions for new trial were involuntary and that trial counsel was ineffective for failing to present additional mental-health evidence.

PROCEDURAL HISTORY

Rodriguez pleaded guilty pursuant to plea agreements in two cases involving sexual offenses against a child. After punishment hearings, the trial court imposed concurrent thirty-year sentences and entered final judgments. Trial counsel did not file motions for new trial, motions to withdraw, or notices of appeal. Rodriguez filed pro se motions for appellate counsel and notices of appeal concerning punishment; appellate counsel was appointed, and the appeals followed. The Court of Appeals denied abatement and affirmed the judgments.

DISPOSITION

affirmed

CASES CITED

- Laws v. State, 693 S.W.3d 718, 726-27 (Tex. App.—Houston [14th Dist.] 2024, pet. ref'd)
- Oldham v. State, 977 S.W.2d 354, 360 (Tex. Crim. App. 1998)
- State v. Garza, 931 S.W.2d 560, 563 (Tex. Crim. App. 1996)
- Washington v. State, No. 01-11-00093-CR, 2013 WL 5604715, at *6 & n.1 (Tex. App.—Houston [1st Dist.] Oct. 10, 2013, pet. ref'd) (mem. op., not designated for publication)
- Johnson v. State, No. 06-08-00012-CR, 2008 WL 11395458, at *2 n.1 (Tex. App.—Texarkana Sept. 5, 2008, no pet.) (mem. op.)

OPINION

PER CURIAM.

Opinion issued May 5, 2026 In The Court of Appeals For The First District of Texas NO. 01-24-00728-CR NO. 01-24-00729-CR HECTOR MANUEL RODRIGUEZ, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 240th District Court Fort Bend County, Texas Trial Court Case No. 22-DCR-099555A Trial Court Case No. 24-DCR-107955 MEMORANDUM OPINION Appellant Hector Manuel Rodriguez argues he was prevented from filing motions for new trial regarding punishment in two cases based on involuntary waivers of his right to file motions for new trial.

Appellant requests that we abate these appeals and remand the cases for the trial court to allow Appellant to file out- of-time motions for new trial. We reject this request and affirm the judgment. Background In May 2022, the Fort Bend County Sheriff’s Office investigated an alleged domestic violence incident involving Appellant and his wife. During the investigation, Appellant’s stepdaughter, Abigail Tate,¹ told an investigator Appellant had sexually assaulted her on multiple occasions.

The State investigated and charged Appellant with continuous sexual abuse of a child under 14 years old in case number 22-DCR-099555A. Separately, the State charged him with aggravated sexual assault of a child in case number 24- DCR-107955.

The State and Appellant reached plea agreements under which Appellant would plead guilty to aggravated sexual assault of a child in both cases. The plea agreements did not include recommendations from the State regarding punishment. Appellant contends the plea-agreement documents contain his written waivers of the right to file any motions for new trial in these cases.

The trial court entered orders accepting Appellant's pleas and signed certifications of his right to appeal, providing he has no right to appeal matters ¹ We use a pseudonym to refer to the victim to protect her privacy. See TEX. CONST. art. I, § 30(a)(1); TEX. CODE CRIM. PROC. art. 58.105. ² related to guilt but may appeal matters related to punishment.

The trial court then held a punishment hearing for both cases. Tate testified Appellant sexually abused her on several occasions over several months. Appellant testified he has mental-health issues associated with military combat service and has been designated as one-hundred-percent disabled. A presentence investigation report corroborated this testimony. Appellant explained these issues cause lapses in his memory and that he has been receiving treatment for them.

He stated he does not remember sexually abusing Tate but has no reason to believe she is lying. Appellant expressed remorse for the abuse and asked for leniency. The defense did not call other witnesses and did not introduce Appellant's medical records. During closing, the State requested the trial court assess punishment at 40 years' confinement.

The trial court sentenced Appellant to 30 years' confinement in each case, to run concurrently. After pronouncing the sentences, the trial court signed second certifications of Appellant's right to appeal, again providing he has no right to appeal matters related to guilt but may appeal matters related to punishment.

The trial court signed final judgments in both cases. Appellant's trial counsel did not file a motion for new trial, a motion to withdraw, or a notice of appeal. Appellant filed a pro se motion for appellate ³ counsel and notice of appeal regarding punishment in each case, complaining that his trial counsel had abandoned him.

The trial court appointed appellate counsel for Appellant and these appeals followed. Analysis Appellant raises two issues supporting his request for abatement of the appeals and remand for him to file out-of-time motions for new trial: (1) his waivers of the right to file motions for new trial were invalid, and (2) in the motions for new trial, he will argue trial counsel was ineffective for not presenting additional evidence regarding Appellant's mental-health issues during punishment.

But even assuming Appellant signed invalid waivers of the right to file motions for new trial, we conclude he is not entitled to the relief sought. Appellant asks that we order the trial court to allow out-of-time motions for new trial by suspending the deadline for such motions pursuant to Texas

Rule of Appellate Procedure 2. See TEX. R. APP. P. 2 (appellate court may suspend a rule's operation in certain circumstances); TEX. R. APP.

P. 21.4(a) (deadline to file motion for new trial is 30th day after sentence suspended or imposed in open court). But the “Court of Criminal Appeals has instructed intermediate appellate courts not to allow defendants to file out-of-time motions for new trial ‘absent truly extraordinary circumstances’” and has explained Rule 2 “‘does not authorize courts of appeals to reach back, after the appeal has been perfected and the record 4 filed, and alter the course of events at the trial court level.’” *Laws v. State*, 693 S.W.3d 718, 726 (Tex.

App.—Houston [14th Dist.] 2024, pet. ref’d) (quoting *Oldham v. State*, 977 S.W.2d 354, 360 (Tex. Crim. App. 1998), and *State v. Garza*, 931 S.W.2d 560, 563 (Tex. Crim. App. 1996)). Additionally, trial counsel’s alleged ineffectiveness “can be raised in a post-conviction writ of habeas corpus, which is the preferred vehicle for raising a complaint regarding trial counsel’s performance.” *Id.* at 727.2 Because Appellant may challenge the effectiveness of counsel in a post- conviction writ of habeas corpus, we conclude this case does not present “truly extraordinary circumstances” in which we should use Rule 2 to “alter the course of events at the trial court level.” *Id.* at 726; see also *Washington v. State*, No. 01-11- 00093-CR, 2013 WL 5604715, at *6 & n.1 (Tex.

App.—Houston [1st Dist.] Oct. 10, 2013, pet. ref’d) (mem. op.; not designated for publication) (declining to abate appeal to allow out-of-time motion for new trial and noting defendant may develop record regarding ineffective assistance of counsel in habeas corpus proceedings).3 2 We also note the Texas Code of Criminal Procedure “entitles an indigent habeas applicant to appointed post-conviction counsel whenever the court concludes that the interests of justice require representation.” *Laws*, 693 S.W.3d at 727 (citing TEX. CODE CRIM.

PROC. art. 1.051(d)(3)). 3 Additionally, at least one court has suggested a defendant who believes his waiver of a motion for new trial is invalid should raise that issue in a motion for new trial. See *Johnson v. State*, No. 06-08-00012-CR, 2008 WL 11395458, at *2 n.1 (Tex. App.—Texarkana Sept. 5, 2008, no pet.) (mem. op.) (“If the joint waiver of new trial and appeal was truly involuntary, as Johnson now contends on appeal, we see 5 We reject Appellant’s request for an abatement without ruling on whether he signed an invalid waiver of his right to file a motion for new trial.

Conclusion We affirm the judgment of the trial court. Andrew Johnson Justice Panel consists of Justices Rivas-Molloy, Johnson, and Dokupil. Do not publish. TEX. R. APP. P. 47.2(b). no reason why he would not have filed a motion for new trial and sought a hearing in the trial court on that motion, despite having otherwise waived that right.”). 6