

## COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

### John Melvin Foster, Jr. v. the State of Texas

Foster v. State · No. 08-22-00181-CR · Decided January 18, 2023

#### SUMMARY

The Eighth District Court of Appeals ordered the trial court to conduct a hearing concerning whether the appellant wished to continue the appeal and whether he had been deprived of a reporter's record. The order also set deadlines for transmitting the trial court's findings, a supplemental clerk's record, and the reporter's record.

#### CASE DETAILS

|                       |                                                                                                     |
|-----------------------|-----------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Texas, Eighth District, El Paso                                                 |
| WRITING FOR THE COURT | Per Curiam; Rodriguez, C.J.; Palafox, J.; Soto, J.                                                  |
| JURISDICTION          | Texas                                                                                               |
| DECIDED               | January 18, 2023                                                                                    |
| DOCKET                | 08-22-00181-CR                                                                                      |
| DISPOSITION           | other                                                                                               |
| PROCEDURAL POSTURE    | Interlocutory appellate order addressing the absence of the reporter's record in a criminal appeal. |
| PRECEDENTIAL VALUE    | Published procedural order with limited substantive precedential value.                             |
| PARTIES               | John Melvin Foster, Jr. v. the State of Texas                                                       |

#### TOPICS

appellate procedure

criminal procedure

#### PRACTICE AREAS

criminal appellate procedure

#### QUESTIONS PRESENTED

1. What procedural steps should be taken when the reporter's record has not been filed in a criminal appeal?

## KEY QUOTATIONS

*“Therefore, it will be necessary for the trial court to conduct a hearing.”* (Order)

*“The trial court shall forward its findings to the District Clerk of Reagan County, Texas, on or before February 7, 2023.”* (Order)

## FACTUAL BACKGROUND

The reporter's record in Appellant's criminal appeal had not been filed by the applicable deadline. After an extension and a denied third request by the official court reporter, the appellate court determined that a trial-court hearing was necessary to address Appellant's desire to continue the appeal and any deprivation of the reporter's record.

## PROCEDURAL HISTORY

The reporter's record was due on December 17, 2022, and a second extension had been granted. The court reporter filed a third request for additional time on December 19, 2022, which the appellate court denied. Because no reporter's record had been filed, the appellate court ordered the trial court to conduct a hearing concerning whether Appellant wished to continue the appeal and whether Appellant had been deprived of a reporter's record.

## DISPOSITION

other

## REMAND INSTRUCTIONS

The 112th District Court must conduct a hearing to determine whether Appellant wishes to continue the appeal and whether Appellant has been deprived of a reporter's record. The trial court must forward its findings to the District Clerk of Reagan County by February 7, 2023. The District Clerk must prepare and forward a supplemental clerk's record containing those findings to the appellate court by February 17, 2023. The trial court reporter must also prepare, certify, and file the record of the trial-court proceedings with the appellate court by February 17, 2023.