

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

William Travis Hendrix v. State

Hendrix v. State · No. 05-18-00822-CR · Decided April 11, 2019

SUMMARY

The Fifth District Court of Appeals of Texas ordered the trial court to conduct a hearing concerning the appellant’s failure to file an appellate brief. The appeal was abated pending findings on whether the appellant wished to prosecute the appeal or had abandoned it, and on whether effective representation was required.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Cory L. Carlyle
JURISDICTION	Texas
DECIDED	April 11, 2019
DOCKET	05-18-00822-CR
DISPOSITION	other
PROCEDURAL POSTURE	Criminal appeal abated because the appellant failed to file an appellate brief after being granted extensions of time.
PRECEDENTIAL VALUE	Published per curiam appellate order
PARTIES	William Travis Hendrix v. The State of Texas

TOPICS

- appellate procedure
- criminal procedure
- right to counsel

PRACTICE AREAS

- criminal appellate procedure
- appellate representation

QUESTIONS PRESENTED

1. What procedure should the appellate court follow when an appellant fails to file a brief after receiving notice and extensions of time?
2. Whether the trial court should determine whether the appellant wishes to prosecute the appeal or has abandoned it and whether effective representation is required if the appellant is indigent.

HOLDINGS

1. When an appellant's brief has not been filed after notice and extensions, the appellate court may abate the appeal and order the trial court to conduct a hearing to determine the reason for the failure, whether the appellant desires to prosecute the appeal, and whether the appeal has been abandoned.
2. If the appellant is indigent, the trial court must take measures necessary to assure effective representation, which may include appointing new counsel.

KEY QUOTATIONS

“Therefore, we ORDER the trial court to conduct a hearing to determine why appellant’s brief has not been filed.” (Order)

“This appeal is ABATED to allow the trial court to comply with the above order.” (Order)

FACTUAL BACKGROUND

Hendrix's appellate brief was initially due January 12, 2019. After notice and two granted extensions, the final deadline was March 22, 2019, but no brief was filed and Hendrix had no further communication with the court.

PROCEDURAL HISTORY

Hendrix appealed from the 366th Judicial District Court of Collin County, Texas. After his brief was not filed by the extended deadline and he had no further communication with the appellate court, the court ordered the trial court to conduct a hearing concerning the missing brief and whether Hendrix wished to prosecute or had abandoned the appeal. The appeal was abated pending the trial court's findings and recommendations.

DISPOSITION

other

REMAND INSTRUCTIONS

The trial court must conduct a hearing to determine why Hendrix's brief was not filed and whether he wishes to prosecute the appeal or has abandoned it. The trial court must make appropriate findings and recommendations, conduct the hearing in Hendrix's absence if his presence cannot be obtained, and, if he is indigent, take measures necessary to assure effective representation, potentially including appointment of new counsel. The trial court must transmit the proceedings record, including 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

William Travis Hendrix v. State

PER CURIAM.

Order entered April 11, 2019 In The Court of Appeals Fifth District of Texas at Dallas No. 05-18-00822-CR WILLIAM TRAVIS HENDRIX, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 366th Judicial District Court Collin County, Texas Trial Court Cause No. 366-82997-2017

ORDER

Appellant's brief was initially due January 12, 2019. When it was not timely filed, we notified appellant by postcard dated January 16, 2019 and instructed him to file his brief along with a motion to extend time by January 26, 2019. Appellant subsequently filed two motions for extensions of time which we granted, making his brief due March 22, 2019. To date, appellant's brief has not been filed, and appellant has had no further communication with the Court regarding the brief or the appeal. Therefore, 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 this appeal or whether appellant 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. We DIRECT the Clerk to send copies of this order to the Honorable Ray Wheless, Presiding Judge, 366th Judicial District Court; Kristin Brown; and to the Collin County District Attorney. 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/ CORY L. CARLYLE

JUSTICE