

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

Michael Ardis v. the State of Texas

Ardis v. State · No. 05-21-00875-CR · Decided March 14, 2022

SUMMARY

The Fifth District Court of Appeals at Dallas ordered the trial court to conduct a hearing concerning the appellant’s failure to file an appellate brief. The appeal was abated pending findings and recommendations regarding whether the appellant wished to prosecute the appeal or whether counsel had abandoned it, with measures for effective representation if necessary.

CASE DETAILS

COURT	Court of Appeals for the Fifth District of Texas at Dallas
WRITING FOR THE COURT	Erin A. Nowell
JURISDICTION	Texas
DECIDED	March 14, 2022
DOCKET	05-21-00875-CR
DISPOSITION	abated
PROCEDURAL POSTURE	Criminal appeal in which appellant's brief was not filed despite notice and an extension; the court abated the appeal and ordered the trial court to investigate the failure to file the brief.
PRECEDENTIAL VALUE	published
PARTIES	Michael Ardis v. The State of Texas

TOPICS

- appellate procedure
- criminal procedure
- right to counsel

PRACTICE AREAS

- appellate procedure
- criminal procedure
- right to counsel

QUESTIONS PRESENTED

1. What procedure should the appellate court follow when an appellant's brief is not filed and the record does not establish whether the appellant or appointed counsel has abandoned the appeal?

2. What measures are required if the appellant is indigent and effective appellate representation may be at issue?

HOLDINGS

1. When an appellant's brief has not been filed and the circumstances do not establish whether the appellant desires to prosecute the appeal, has abandoned the appeal, or has been abandoned by appointed counsel, the trial court must conduct a hearing, make appropriate findings and recommendations, and transmit the resulting record to the appellate court.
2. If appellant is indigent, the trial court must take measures necessary to assure effective representation, which may include appointment of new counsel.

KEY QUOTATIONS

"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

Appellant's brief was not filed by the original due date. Although the appellate court notified appellant and granted an extension motion, the brief remained unfiled by the extended deadline, and the court received no further communication from appellant.

PROCEDURAL HISTORY

The appeal was taken from the 265th Judicial District Court of Dallas County, Texas, in trial court cause number F21-10832-R. Appellant's brief was originally due December 23, 2021. After notice from the appellate court, appellant obtained an extension making the brief due February 25, 2022, but no brief was filed and appellant did not communicate with the court. The appellate court ordered a hearing and findings regarding whether appellant wished to prosecute the appeal, had abandoned it, or had been abandoned by appointed counsel, and abated the appeal for twenty days.

DISPOSITION

abated

REMAND INSTRUCTIONS

The trial court must conduct a hearing, including in appellant's absence if it cannot obtain his presence, determine whether appellant desires to prosecute the appeal or whether appellant or appointed counsel has abandoned it, make appropriate findings and recommendations, and transmit the record of the proceedings to the appellate court within twenty days. If appellant is indigent, the trial court must take measures necessary to assure effective representation, potentially including appointment of new counsel.

CASES CITED

- Meza v. State, 742 S.W.2d 708 (Tex. App.—Corpus Christi 1987, no pet.) (per curiam)

OPINION

PER CURIAM.

Order entered March 14, 2022 In The Court of Appeals Fifth District of Texas at Dallas No. 05-21-00875-CR MICHAEL ARDIS, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 265th Judicial District Court Dallas County, Texas Trial Court Cause No. F21-10832-R ORDER When appellant's brief, originally due on December 23, 2021, was not filed, we notified him by postcard and directed him to file his brief within ten days.

On January 11, 2022, appellant filed an extension motion which we granted making his brief due on February 25, 2022. To date, no brief has been filed and we have had no communication from appellant regarding this appeal.

We ORDER the trial court to conduct a hearing to determine why appellant's brief has not been filed. The trial court shall make appropriate findings and recommendations and determine whether appellant desires to prosecute this appeal, whether appellant has abandoned the appeal, or whether appointed 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 TWENTY DAYS of the date of this order. We DIRECT the Clerk to send copies of this order to the Honorable Jennifer Bennett, Presiding Judge, 265th Judicial District Court; to Lamonica Littles, court coordinator, 265th Judicial District Court; to Christina O'Neil, Chief Judicial Staff Counsel; and to counsel for all parties.

This appeal is ABATED to allow the trial court to comply with the above order. The appeal shall be reinstated twenty days from the date of this order or when the Court finds it appropriate to do so. /s/ ERIN A. NOWELL JUSTICE