

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

James Edward Rogers, Jr. v. State

No. 05-14-00695-CR (Tex. App.—Dallas Feb. 19, 2015) · No. 05-14-00695-CR · Decided February 23, 2015

SUMMARY

The Court of Appeals for the Fifth District of Texas denied the appellant’s third motion to extend the deadline for filing his brief. The court abated the appeal and ordered the trial court to conduct a hearing regarding prosecution of the appeal, indigency, and representation, and to transmit findings and recommendations 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	February 23, 2015
DOCKET	05-14-00695-CR
DISPOSITION	other
PROCEDURAL POSTURE	On appeal from the 196th Judicial District Court of Hunt County, Texas, after appellant filed a third motion to extend the time to file his appellate brief.
PRECEDENTIAL VALUE	Unpublished procedural order; precedential status is not stated in the opinion text.
PARTIES	James Edward Rogers, Jr. v. The State of Texas

TOPICS

- appellate procedure
- criminal procedure
- right to counsel

PRACTICE AREAS

- criminal appellate procedure
- right to counsel

QUESTIONS PRESENTED

- Whether the appellate court should grant appellant's third motion to extend the time to file his brief.

2. What procedures were required under Texas Rule of Appellate Procedure 38.8(b) when appellant's brief had not been filed and representation or appellant's desire to prosecute the appeal was uncertain.

HOLDINGS

1. The court denied appellant's third motion to extend the time to file his brief.
2. The trial court was required to conduct a hearing and make findings and recommendations concerning whether appellant desired to prosecute the appeal, whether he was indigent, and whether retained counsel had abandoned the appeal; if appellant was indigent, the court was required to take measures necessary to assure effective representation, potentially including appointment of new counsel.

KEY QUOTATIONS

“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.”

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

FACTUAL BACKGROUND

Appellant's brief had not been filed despite prior extensions, and appellant sought a third extension of time. The appellate court required the trial court to determine whether appellant wished to continue prosecuting the appeal, whether he was indigent, and, if not indigent, whether retained counsel had abandoned the appeal.

PROCEDURAL HISTORY

The appeal was pending without appellant's brief. The Court of Appeals denied appellant's third motion to extend the briefing deadline and ordered the trial court to hold a hearing concerning the failure to file the brief, appellant's desire to prosecute the appeal, his indigency, and possible abandonment by retained counsel. The appeal was abated for the trial court to conduct the hearing and transmit written findings and recommendations.

DISPOSITION

other

REMAND INSTRUCTIONS

The trial court was ordered to conduct a hearing, make appropriate findings and recommendations regarding appellant's desire to prosecute the appeal, indigency, and any abandonment by retained counsel, take measures necessary to assure effective representation if appellant was indigent, and transmit the record of the proceedings, including written findings and recommendations, to the Court of Appeals within thirty days. The appeal was abated and was to be reinstated thirty days after the order or upon receipt of the findings, whichever occurred 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 February 19, 2015 In The Court of Appeals Fifth District of Texas at Dallas No. 05-14-00695-CR JAMES EDWARD ROGERS, JR., Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 196th Judicial District Court Hunt County, Texas Trial Court Cause No. 28576 ORDER The Court DENIES appellant's third motion to extend time to file his brief.

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