

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Everett Gray v. State

Everett Gray v. State · No. Nos. 05-20-00772-CR, 05-20-00773-CR · Decided September 15, 2020

SUMMARY

The Texas Court of Appeals for the Fifth District ordered the trial court to determine whether Everett Gray was entitled to appointed counsel in two out-of-time criminal appeals. The court also ordered completed certifications of the right to appeal and supplemental records, and abated the appeals pending compliance.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Robert D. Burns, III, Chief Justice
JURISDICTION	Texas
DECIDED	September 15, 2020
DOCKET	Nos. 05-20-00772-CR, 05-20-00773-CR
DISPOSITION	other
PROCEDURAL POSTURE	After the Texas Court of Criminal Appeals granted Gray out-of-time appeals, he filed timely notices of appeal. The court of appeals abated the appeals and ordered the trial court to determine whether Gray was entitled to appointed counsel and to complete certifications regarding his right to appeal.
PRECEDENTIAL VALUE	Published status indicated in the supplied metadata; no reporter citation appears in the opinion text.
PARTIES	Everett Gray v. The State of Texas

TOPICS

appellate procedure

right to counsel

criminal procedure

appellate jurisdiction

PRACTICE AREAS

criminal appellate procedure

right to counsel

criminal procedure

QUESTIONS PRESENTED

1. Whether the appeals should be abated for the trial court to determine whether Gray was entitled to appointed appellate counsel.
2. Whether the trial court was required to complete and clarify certifications concerning Gray's right to appeal in both cases.

HOLDINGS

1. The appeals were properly abated for the trial court to conduct a hearing determining whether Gray was entitled to court-appointed counsel and, if so, to appoint counsel to represent him.
2. The trial court was required to file completed certifications of Gray's right to appeal in each case before the appeals proceeded.

FACTUAL BACKGROUND

Gray pursued out-of-time appeals in two criminal cases after the Texas Court of Criminal Appeals granted relief permitting those appeals. The appellate records showed that one appeal certification was incomplete, while the other stated that Gray waived his right to appeal even though his plea agreement was described as an open plea. The appellate court therefore required the trial court to clarify Gray's right to counsel and right to appeal before the appeals proceeded.

PROCEDURAL HISTORY

The appeals arose from two Dallas County criminal cases. The Texas Court of Criminal Appeals granted Gray out-of-time appeals, after which he timely filed notices of appeal. The appellate clerk's records revealed an incomplete right-to-appeal certification in one case and a certification stating that Gray waived appeal in the other, despite the plea agreement stating that it was an open plea. The court ordered the trial court to conduct a counsel-eligibility hearing, complete the appeal certifications, transmit supplemental records, and comply within thirty days, and it abated the appeals pending that compliance.

DISPOSITION

other

REMAND INSTRUCTIONS

The trial court must conduct a hearing on Gray's entitlement to court-appointed counsel; appoint counsel if he is eligible; otherwise determine whether he will retain counsel and provide retained counsel's identifying information; file completed certifications of Gray's right to appeal in both cases; and transmit the hearing record, findings, orders, supporting documentation, appointment information, and certifications to the court of appeals within thirty days. The appeals are abated and will be reinstated thirty days after the order or when the required findings are received, whichever occurs first.

OPINION

PER CURIAM.

Order entered September 15, 2020 In The Court of Appeals Fifth District of Texas at Dallas No. 05-20-00772-CR No. 05-20-00773-CR EVERETT GRAY, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the Criminal District Court No. 2 Dallas County, Texas Trial Court Cause Nos. F15-71448-I & F15-55801-I ORDER After the Texas Court of Criminal Appeals granted Everett Gray out of time appeals in the above cases, he filed timely notices of appeal.

We ORDER the trial court to conduct a hearing to determine whether appellant is entitled to court-appointed counsel in these appeals. If the trial court finds that appellant is entitled to court-appointed counsel, we ORDER the trial court to appoint an attorney to represent appellant in the appeals. If the trial court finds that appellant is not entitled to court-appointed counsel, the trial court shall determine whether appellant will retain counsel to represent him in the appeals and, if so, the name, State Bar number, and contact information for retained counsel.

The clerk's records were filed on September 11, 2020. In cause number F15- 71448-I, the certification of appellant's right to appeal does not have any boxes checked; in cause number F15-55801-I, the certification states appellant waived his right to appeal despite his plea agreement stating it was an open plea.

We ORDER the trial court to file completed certifications of appellant's right to appeal in each case. We ORDER the trial court to transmit any record of the hearing on counsel, including findings of fact, any orders, and any supporting documentation, to this Court within THIRTY DAYS of the date of this order.

We ORDER District Clerk Felicia Pitre to file supplemental clerk's records containing the appointment of counsel and the certifications of appellant's right to appeal 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 Nancy Kennedy, Presiding Judge, Criminal District Court No. 2; to Everett Gray, TDCJ# 02091901, Smith Unit, 1313 CR 19, Lamesa, TX 79331; and to the Dallas County District Attorney's Office.

We ABATE the appeals to allow the trial court to comply with the order. The appeals will be reinstated thirty days from the date of this order or when the findings are received, whichever is earlier. /s/ ROBERT D. BURNS, III CHIEF JUSTICE