

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Michael Paul Bridwell v. State

Bridwell · No. 05-12-01739-CR · Decided April 9, 2013

SUMMARY

The Court of Appeals for the Fifth District of Texas abated the appeal because the reporter’s record was overdue and the appellant’s intent to pursue the appeal was unclear. The trial court was ordered to determine whether the appellant wished to prosecute the appeal, his indigence and representation status, and the reasons for and expected filing date of the reporter’s record.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Lana Myers
JURISDICTION	Texas
DECIDED	April 9, 2013
DOCKET	05-12-01739-CR
DISPOSITION	other
PROCEDURAL POSTURE	Appellant's criminal appeal was pending in the Court of Appeals, but the reporter's record was overdue and the court lacked information about whether appellant wished to pursue the appeal, whether he was indigent, and whether he had effective counsel.
PRECEDENTIAL VALUE	published
PARTIES	Michael Paul Bridwell v. The State of Texas

TOPICS

- appellate procedure
- criminal procedure
- ineffective assistance
- right to counsel

PRACTICE AREAS

- criminal appellate procedure
- criminal procedure
- right to counsel

QUESTIONS PRESENTED

- Whether the appeal should be abated for trial-court findings concerning appellant's desire to prosecute the appeal, indigence, entitlement to a reporter's record without payment, and representation by counsel.

2. What findings were necessary to determine the identities and expected filing date of the court reporter or reporters responsible for the overdue reporter's record.

HOLDINGS

1. Because the appellate record was overdue and the court lacked necessary information concerning appellant's desire to prosecute the appeal, indigence, entitlement to a reporter's record without payment, and effective representation, the appeal was properly abated and the trial court was ordered to make findings and transmit a supplemental record.

KEY QUOTATIONS

“Accordingly, we ORDER the trial court to make findings of fact regarding whether appellant has been deprived of the reporter’s record because of ineffective counsel, indigence, or for any other reason.”

“The appeal is ABATED to allow the trial court to comply with this order.”

FACTUAL BACKGROUND

The reporter's record in appellant's criminal appeal was overdue. A court reporter reported that John Houston Nix had said appellant would not pursue the appeal, but Nix later informed the appellate court that he did not represent appellant, and appellant himself had not communicated with the court.

PROCEDURAL HISTORY

The appeal arose from the County Court at Law No. 1 of Grayson County, Texas, trial court cause number 2011-1-0738. After receiving notice that the reporter's record was overdue and that a person identified as appellant's attorney denied representing him, the appellate court ordered the trial court to make specified findings and abated the appeal pending receipt of a supplemental record.

DISPOSITION

other

REMAND INSTRUCTIONS

The trial court was ordered to determine first whether appellant desired to prosecute the appeal; if so, whether he was indigent and entitled to proceed without payment of costs for the reporter's record; if appellant was indigent, to take measures necessary to assure effective representation, potentially including appointment of new counsel; if appellant was not indigent, to determine whether he had retained or intended to retain counsel; and to identify each court reporter, obtain explanations for the delay, and determine the earliest filing date for the reporter's record. The trial court was ordered to transmit written findings, supporting documentation, and orders to the appellate court within thirty days.

OPINION

PER CURIAM.

Order entered April 9, 2013 In The Court of Appeals Fifth District of Texas at Dallas No. 05-12-01739-CR MICHAEL PAUL BRIDWELL, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the County Court at Law No. 1 Grayson County, Texas Trial Court Cause No. 2011-1-0738 ORDER The reporter's record is overdue in this appeal.

On March 21, 2013, we received a letter from court reporter Misty Skinner stating that appellant's attorney John Houston Nix informed her that appellant would not be pursuing the appeal. Because the Court did not have Mr. Nix listed as appellant's attorney, we sent him a letter inquiring about whether he is representing appellant and whether appellant intends to pursue the appeal.

Mr. Nix responded on March 27, 2013 that he is not representing appellant. The Court has received no correspondence from appellant himself regarding the appeal. Accordingly, we ORDER the trial court to make findings of fact regarding whether appellant has been deprived of the reporter's record because of ineffective counsel, indigence, or for any other reason. • The trial court shall first determine whether appellant desires to prosecute the appeal.

If the trial court determines that appellant does not desire to prosecute this appeal, it shall make a finding to that effect. • If the trial court determines that appellant desires to prosecute the appeal, it shall next determine whether appellant is indigent and entitled to proceed without payment of costs for the reporter's record. If appellant is entitled to proceed without payment of costs, the trial court shall make a finding to that effect.

Moreover, 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. If the trial court finds appellant is not indigent, it shall determine whether appellant has retained counsel or intends to retain counsel for the appeal. • The trial court shall next determine: (1) the name and address of each court reporter who recorded the proceedings in this cause; (2) the court reporter's explanation for the delay in filing the reporter's record; and (3) the earliest date by which the reporter's record can be filed.

We ORDER the trial court to transmit a supplemental record, containing the written findings of fact, any supporting documentation, and any orders, to this Court within THIRTY DAYS of the date of this order. The appeal is ABATED to allow the trial court to comply with this order. It shall be reinstated thirty days from the date of this order or when the supplemental record is received, whichever is earlier. /s/ LANA MYERS JUSTICE