

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON

Paul T. Zurita v. The State of Texas

Zurita · No. 01-17-00274-CR; 01-17-00275-CR · Decided August 8, 2017

SUMMARY

The First Court of Appeals of Texas abated the appeals because the reporter’s record had not been filed and appellant’s counsel had not demonstrated payment arrangements or indigency. The court remanded the matters for a hearing concerning appellant’s intent to pursue the appeals, representation, indigency, preparation of the reporter’s record, and related findings and recommendations.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas at Houston
WRITING FOR THE COURT	Jane Bland, Acting individually; Jane Bland
JURISDICTION	Texas
DECIDED	August 8, 2017
DOCKET	01-17-00274-CR; 01-17-00275-CR
DISPOSITION	remanded
PROCEDURAL POSTURE	The appeals were abated and remanded to the trial court for a hearing because the reporter’s record had not been filed and appellant’s counsel had not responded to the appellate court’s notice concerning payment or indigency.
PRECEDENTIAL VALUE	published
PARTIES	Paul T. Zurita v. The State of Texas

TOPICS

- appellate procedure
- criminal procedure
- right to counsel
- appellate jurisdiction

PRACTICE AREAS

- Texas criminal appellate procedure
- criminal procedure
- right to counsel
- indigency and appellate records

QUESTIONS PRESENTED

- Whether the appeals should be abated for a trial-court hearing concerning appellant’s intent to pursue the appeals, continued representation, indigency, and payment or preparation of the reporter’s record.

2. What procedures the trial court must follow if appellant is indigent or nonindigent and counsel withdraws.

HOLDINGS

1. The appellate court abated the appeals and remanded them to the trial court for a hearing to determine whether appellant wished to pursue the appeals, whether counsel would continue representation, and whether appellant was indigent, with corresponding procedures for obtaining the reporter's record.
2. If appellant is indigent, the trial court must appoint substitute appellate counsel when appropriate and order the court reporter to file the reporter's record at no cost to appellant; if appellant is not indigent and counsel withdraws, the trial court must address waiver of counsel, self-representation, substitute counsel, and payment of the reporter's record.

KEY QUOTATIONS

"Accordingly, we abate the appeal and remand the cause to the trial court to conduct a hearing at which a representative of the Hays County District Attorney's Office and appellant's appellate counsel, Larry Warner, shall be present." (Order)

"The appeal is abated, treated as a closed case, and removed from this Court's active docket." (Order)

FACTUAL BACKGROUND

The clerk's record in the appeals had been filed, but the reporter's record had not. The court reporter reported that arrangements had not been made to pay for the record, and the appellate court's records did not show that appellant was appealing as an indigent. Appellant's counsel failed to respond to the court's notice or provide evidence of payment, arrangements to pay, or indigency.

PROCEDURAL HISTORY

The clerk's record was filed on May 3, 2017, but the reporter's record was not filed. The appellate court notified counsel that arrangements to pay for the record had not been made and that appellant was not shown to be indigent. After counsel failed to respond or provide proof of payment, the court abated the appeals and remanded them for a trial-court hearing addressing appellant's desire to pursue the appeals, representation, indigency, and preparation of the reporter's record.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must conduct a hearing with a representative of the Hays County District Attorney's Office and appellant's appellate counsel present; determine whether appellant wishes to pursue the appeals, whether counsel will continue or should be permitted to withdraw, and whether appellant is indigent; address appointment or substitution of counsel, waiver and self-representation requirements, and payment or preparation of the

reporter's record; enter separate written findings of fact, conclusions of law, and recommendations; and have a court reporter record the hearing. The supplemental reporter's record and clerk's record must be filed within 30 days of the hearing. The appeals are to remain abated and treated as closed until the supplemental records are filed, at which point they will be reinstated on the appellate court's active docket.

OPINION

Paul T. Zurita v. State

PER CURIAM.

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON ORDER

Appellate case name: Paul T. Zurita v. The State of Texas Appellate case number: 01-17-00274-CR; 01-17-00275-CR Trial court case number: CR-14-0693; CR-16-0646 Trial court: 22nd District Court of Hays County The clerk's record was filed on May 3, 2017, but the reporter's record has not been filed. On June 7, 2017, the Clerk of this Court notified appellant's counsel, Larry Warner, that the court reporter responsible for preparing the record in this appeal informed the Court that arrangements had not been made to pay for the record and this Court's records indicated that appellant is not appealing as indigent. See TEX. R. APP. P. 35.3(b). The Clerk further notified appellant's counsel that unless he caused the reporter's record to be filed in this Court, made arrangements to pay for the reporter's record, or provided proof that he is entitled to proceed without payment of costs by July 7, 2017, the Court might consider the appeal without a reporter's record. See TEX. R. APP. P. 37.3(c). Appellant's counsel failed to respond and has not provided the Court with evidence showing that appellant has paid or made arrangements to pay the court reporter or caused a reporter's record to be filed in the Court. Accordingly, we abate the appeal and remand the cause to the trial court to conduct a hearing at which a representative of the Hays County District Attorney's Office and appellant's appellate counsel, Larry Warner, shall be present. At the trial court's discretion, appellant may be present for the hearing in person or by closed-circuit video teleconferencing. We direct the trial court to: 1) Determine whether appellant still wishes to pursue this appeal; 2) Determine whether appellant's counsel, Larry Warner, intends to represent appellant on appeal; and, if not, whether to allow counsel to withdraw; 3) Determine whether appellant is now indigent, and a. if appellant is indigent, (i) appoint substitute appellate counsel at no cost to appellant if appellant's counsel is allowed to withdraw and (ii) order the court reporter to file the reporter's record in this case within 30 days of the date of the hearing, at no cost to appellant; b. if appellant is not indigent and appellant's counsel is allowed to withdraw, admonish appellant regarding the dangers and disadvantages of self-representation, and:

1. determine whether appellant is knowingly and intelligently waiving his right to counsel and (A) if so, obtain a written waiver of the right to counsel, or (B) if appellant does not wish to proceed pro se, provide a deadline of no more than 30 days from the date of the hearing by which appellant must hire substitute counsel; and

2. provide a deadline of no more than 30 days from the date of the hearing by which appellant must provide written evidence demonstrating payment of the reporter's record and further notify appellant that failure to provide such evidence may result in consideration of his appeal without a reporter's record. 4) Enter written findings of fact, conclusions of law, and recommendations as to these issues, separate and apart from any docket sheet notations; and 5) Make any other findings and recommendations the trial court deems appropriate. See TEX. CRIM. PROC. art. 1.051(a), (c), (d)(1), (f), 26.04, TEX. R. APP. P. 38.8(b). The trial court shall have a court reporter record the hearing and file a supplemental reporter's record with this Court within 30 days from the date of this order. The trial court's findings and recommendations and any orders issued pursuant to the hearing shall be included in a supplemental clerk's record and filed in this Court within 30 days from the date of this order. The appeal is abated, treated as a closed case, and removed from this Court's active docket. The appeal will be reinstated on this Court's active docket when the supplemental clerk's record and the supplemental reporter's record of the hearing are filed in this Court. The court coordinator of the trial court shall set a hearing date and notify the parties and the Clerk of this Court of such date. It is so ORDERED. Judge's signature: /s/ Jane Bland Acting individually Date: August 8, 2017