

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

1. 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.

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