

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON

German Perez-Vasquez v. The State of Texas

Perez-Vasquez v. State · No. 01-15-00882-CR · Decided January 5, 2017

SUMMARY

The First District Court of Appeals of Texas reinstated German Perez-Vasquez's criminal appeal after appointed counsel filed a late brief. The court withdrew its abatement order, granted the motion to exceed the brief's page limit, accepted the late-filed brief, and ordered the State's brief due within 30 days.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas at Houston
WRITING FOR THE COURT	Massengale
JURISDICTION	Texas
DECIDED	January 5, 2017
DOCKET	01-15-00882-CR
DISPOSITION	other
PROCEDURAL POSTURE	Criminal appeal in which appointed appellate counsel failed to timely file an appellant's brief. The court abated the appeal for a trial-court hearing, then reinstated it after counsel tendered the brief and moved to reinstate.
PRECEDENTIAL VALUE	Published order; precedential status is not otherwise specified in the opinion text.
PARTIES	German Perez-Vasquez v. The State of Texas

TOPICS

appellate procedure

criminal procedure

PRACTICE AREAS

criminal appellate procedure

appellate briefing

QUESTIONS PRESENTED

1. Whether the appeal should be reinstated after appointed counsel filed the appellant's brief following abatement.
2. Whether the court should accept the late-filed brief and grant permission to exceed the brief's page limit.
3. Whether counsel's motion for an additional extension should be granted.

HOLDINGS

1. The appeal should be reinstated, and the prior abatement order should be withdrawn, because appointed counsel filed the appellant's brief and moved to reinstate the appeal.
2. The court granted appellant's motion to exceed the brief's page limit and accepted the late-filed brief.
3. The motion for an additional extension of time was denied, although the late-filed brief was accepted.

FACTUAL BACKGROUND

Appointed appellate counsel, Kevin B. Stryker, failed to file an appellant's brief despite receiving five extensions. After the appellate court denied a sixth extension and ordered filing within 20 days, counsel still did not file the brief, prompting the court to abate the appeal for a hearing. Counsel then tendered a brief, requested additional time and permission to exceed the page limit, and moved to reinstate the appeal.

PROCEDURAL HISTORY

The trial court was the 405th District Court of Galveston County in trial cause number 13CR0953. After counsel received five extensions but failed to file a brief, the appellate court denied a sixth extension and ordered the brief filed within 20 days. When no brief was filed, the court abated the appeal on December 13, 2016, and remanded for a hearing. Counsel tendered the brief the same day and moved to reinstate the appeal on December 16, 2016. The appellate court granted reinstatement, withdrew the abatement order, granted the motion to exceed the page limit, denied the extension motion, accepted the late-filed brief, and ordered the State's brief due within 30 days.

DISPOSITION

other

REMAND INSTRUCTIONS

The appeal was reinstated on the active docket; the prior abatement order was withdrawn. The State was ordered to file its brief within 30 days.

OPINION

German Perez-Vasquez v. State

PER CURIAM.

COURT OF APPEALS FOR THE

FIRST DISTRICT OF TEXAS AT HOUSTON

ORDER

Appellate case name: German Perez-Vasquez v. The State of Texas Appellate case number: 01-15-00882-CR Trial court case number: 13CR0953 Trial court: 405th District Court of Galveston County On October 25, 2016, the court issued an order stating that appointed counsel, Kevin B. Stryker, had not filed a brief. The order noted that counsel had requested and received five extensions, and it denied counsel's sixth request for extension, ordering him to file the brief within 20 days, or else an abatement order would issue for a hearing in the trial court. No brief was filed. On December 13, 2016, the court abated the appeal and remanded to the trial court for a hearing to determine why counsel had not filed a brief. On the same day the order issued, counsel tendered a brief, a motion for extension of time to file the brief, and a motion to exceed the page limit for the brief. On December 16, 2016, counsel filed a motion to reinstate the appeal because the brief had been filed. We grant the motion to reinstate, withdraw our abatement order of December 13, 2016, and order the appeal reinstated on the active docket. We grant appellant's motion to exceed the page length for the brief. We deny the motion for extension but we nevertheless accept the late-filed brief received on December 13, 2016. See TEX. R. APP. P. 38.8(b)(1) The State's brief is due 30 days from the date of this order. It is so ORDERED. Judge's signature: /s/ Massengale X Acting individually Acting for the Court Date: January 5, 2017