

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

## Evan Stuart Fairbanks v. The State of Texas

Fairbanks · No. 01-14-00124-CR; 01-14-00125-CR · Decided November 7, 2014

### SUMMARY

The First District Court of Appeals of Texas denied the appellant's fourth motion to extend the deadline for filing his brief in two criminal appeals. The court stated that if the appellant's motion for en banc reconsideration was denied and the brief was not filed by October 27, 2014, the appeals would be abated and remanded for a hearing under Texas Rule of Appellate Procedure 38.8(b).

### CASE DETAILS

|                       |                                                                                                                                                                                    |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals for the First District of Texas at Houston                                                                                                                        |
| WRITING FOR THE COURT | Michael Massengale                                                                                                                                                                 |
| JURISDICTION          | Texas                                                                                                                                                                              |
| DECIDED               | November 7, 2014                                                                                                                                                                   |
| DOCKET                | 01-14-00124-CR; 01-14-00125-CR                                                                                                                                                     |
| DISPOSITION           | other                                                                                                                                                                              |
| PROCEDURAL POSTURE    | The court ruled on the appellant's fourth motion to extend the deadline for filing his brief while a motion for en banc reconsideration of an order denying abatement was pending. |
| PRECEDENTIAL VALUE    | Published order; no reporter citation appears in the provided text.                                                                                                                |
| PARTIES               | Evan Stuart Fairbanks v. The State of Texas                                                                                                                                        |

### TOPICS

appellate procedure

criminal procedure

### PRACTICE AREAS

criminal appellate procedure

criminal procedure

### QUESTIONS PRESENTED

1. Whether the appellant should receive a fourth extension of time to file his appellate brief, conditioned on denial of his motion for en banc reconsideration.
2. What procedural action should follow if the appellant failed to file his brief by the deadline.

## HOLDINGS

1. The court denied the appellant's fourth motion to extend the deadline for filing his brief.

## KEY QUOTATIONS

*“In the event that appellant’s motion for en banc reconsideration is denied and appellant’s brief is not filed by October 27, 2014, these cases will be abated and remanded to the trial court for a hearing pursuant to Texas Rule of Appellate Procedure 38.8(b).”*

## FACTUAL BACKGROUND

The opinion contains no substantive facts concerning the underlying criminal cases. It concerns only the procedural history of extensions of time for filing the appellant's brief and the appellant's request to abate the appeals.

## PROCEDURAL HISTORY

The appellant's brief was originally due July 16, 2014, and the court granted prior extensions. After the court denied the appellant's motion to abate on September 25, 2014, the appellant sought another extension contingent on denial of his motion for en banc reconsideration. The court denied the fourth extension motion but stated that, if the brief was not filed by October 27, 2014, the appeals would be abated and remanded to the trial court for a hearing under Texas Rule of Appellate Procedure 38.8(b).

## DISPOSITION

other

## REMAND INSTRUCTIONS

If the appellant's motion for en banc reconsideration was denied and the appellant's brief was not filed by October 27, 2014, the appeals were to be abated and remanded to the trial court for a hearing under Texas Rule of Appellate Procedure 38.8(b).

## OPINION

PER CURIAM.

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON ORDER ON MOTION Cause number: 01-14-00124-CR; 01-14-00125-CR Style: Evan Stuart Fairbanks v The State of Texas \* Date motion filed: October 8, 2014 Type of motion: Motion to Extend Time to File Appellant’s Brief Party filing motion: Appellant Document to be filed: Appellant's Brief If motion to extend time: Deadline to file document: October 25, 2014 Number of previous extensions granted: 3 Current Deadline: October 25, 2014 Length of extension sought: 30 days from denial of motion for en banc reconsideration of order denying motion to abate Ordered that motion is: Granted If document is to be filed, document due: The Clerk is instructed to file the

document as of the date of this order Absent extraordinary circumstances, the Court will not grant additional motions to extend time Denied Dismissed (e.g., want of jurisdiction, moot) Appellant's brief was originally due on July 16, 2014.

We granted two prior 30-day extension requests extending the deadline to September 15, 2014. On August 13, 2014, appellant filed a motion to abate these appeals followed by a third extension motion filed on September 17, 2014 requesting that, in the event that the motion to abate is denied, we grant an extension of 30 days from the date of the denial.

On September 25, 2014, we denied the motion to abate and granted the third motion for an extension of time. Thus, appellant's brief is currently due on October 27, 2014. On October 8, 2014, appellant filed a fourth extension motion requesting that, in the event that his motion for en banc reconsideration of the order denying his motion to abate is denied, we extend the time to file his brief to 30 days after the denial of his motion for en banc reconsideration.

Appellant's fourth motion to extend the time for filing his brief is DENIED. In the event that appellant's motion for en banc reconsideration is denied and appellant's brief is not filed by October 27, 2014, these cases will be abated and remanded to the trial court for a hearing pursuant to Texas Rule of Appellate Procedure 38.8(b). See TEX. R. APP. 38.8(b)(2), (3).

Judge's signature: /s/ Michael Massengale Acting individually Acting for the Court Date: October 16, 2014