

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Deric Eugene Madison v. State

No. 05-15-00859-CR · No. No. 05-15-00859-CR · Decided September 22, 2015

SUMMARY

The Texas Court of Appeals, Fifth District at Dallas denied a court reporter's request for an extension to file the reporter's record. The court abated the appeal and ordered the trial court to make findings concerning the appellant's desire to prosecute, indigence, representation, the responsible court reporter, and the expected filing date of the reporter's record.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Carolyn Wright
JURISDICTION	Texas
DECIDED	September 22, 2015
DOCKET	No. 05-15-00859-CR
DISPOSITION	other
PROCEDURAL POSTURE	On appeal from the 291st Judicial District Court of Dallas County, the court reporter failed to file the reporter's record by the ordered deadline. The court abated the appeal and directed the trial court to make findings concerning appellant's desire to prosecute, indigence, representation, and the status of the reporter's record.
PRECEDENTIAL VALUE	published
PARTIES	Deric Eugene Madison v. The State of Texas

TOPICS

appellate procedure

criminal procedure

right to counsel

ineffective assistance

PRACTICE AREAS

appellate procedure

criminal procedure

right to counsel

QUESTIONS PRESENTED

1. What findings must the trial court make when the reporter's record has not been filed and the appellant may have been deprived of the record because of ineffective counsel, indigence, or another reason?
2. Whether the appeal should be abated to permit the trial court to determine appellant's desire to prosecute the appeal, indigence and entitlement to a reporter's record without payment, possible abandonment by retained counsel, and the status of the court reporter's record.

HOLDINGS

1. When the reporter's record has not been filed, the trial court must determine whether appellant desires to prosecute the appeal; if so, whether appellant is indigent and entitled to proceed without paying costs for the reporter's record; whether effective representation requires action such as appointment of new counsel; whether retained counsel has abandoned the appeal if appellant is not indigent; and the reasons and anticipated filing date for the reporter's record.
2. The appeal is abated to allow the trial court to comply with the appellate court's fact-finding order, and the trial court must transmit the findings, supporting documentation, and orders within thirty days.

KEY QUOTATIONS

"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

Court reporter Cheryl Dixon requested an extension of time to file the reporter's record, but the record was not filed by the extended deadline of September 18, 2015. The appellate court required the trial court to investigate whether appellant lacked the record because of ineffective counsel, indigence, or another reason, and to determine the status and earliest filing date of the record.

PROCEDURAL HISTORY

Madison appealed from the 291st Judicial District Court of Dallas County, Texas, in trial court cause number F14-76000-U. After denying the court reporter's request for an extension and noting that the reporter's record had not been filed, the Court of Appeals ordered factual findings and supporting materials from the trial court and abated the appeal for thirty days or until receipt of those materials.

DISPOSITION

other

REMAND INSTRUCTIONS

The trial court must first determine whether appellant desires to prosecute the appeal. If he does, the court must determine whether he is indigent and entitled to proceed without payment of costs for the reporter's record; if indigent, it must take measures necessary to assure effective representation, potentially including appointment of

new counsel. If appellant is not indigent, the court must determine whether retained counsel has abandoned the appeal. The trial court must also identify each court reporter who recorded the proceedings, obtain the explanation for the delay, determine the earliest date the reporter's record can be filed, and transmit written findings, supporting documentation, and orders to the Court of Appeals within thirty days.

OPINION

PER CURIAM.

Order entered September 22, 2015 In The Court of Appeals Fifth District of Texas at Dallas No. 05-15-00859-CR DERIC EUGENE MADISON, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 291st Judicial District Court Dallas County, Texas Trial Court Cause No. F14-76000-U ORDER The Court DENIES court reporter Cheryl Dixon's September 11, 2015 request for an extension of time until September 18, 2015 to file the reporter's record.

Ms. Dixon did not file the reporter's record by September 18, 2015. 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 the 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 retained counsel has abandoned 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 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.

The appeal shall be reinstated thirty days from the date of this order or when the findings are received, whichever is earlier. /s/ CAROLYN WRIGHT CHIEF JUSTICE