

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Aaron Howard Kloepper v. State

No. 05-13-00723-CR · No. No. 05-13-00723-CR · Decided October 31, 2013

SUMMARY

The Texas Court of Appeals ordered the trial court to conduct a hearing concerning the failure to file the appellant’s brief. The trial court was directed to determine whether the appellant wished to prosecute the appeal, was indigent, or had been abandoned by retained counsel, and the appeal was abated pending the required findings and recommendations.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	David Evans
JURISDICTION	Texas
DECIDED	October 31, 2013
DOCKET	No. 05-13-00723-CR
DISPOSITION	other
PROCEDURAL POSTURE	On appeal from the 296th Judicial District Court of Collin County, Texas, the court ordered the trial court to conduct a hearing because appellant's brief had not been filed and abated the appeal pending the resulting findings and recommendations.
PRECEDENTIAL VALUE	Published order
PARTIES	Aaron Howard Kloepper v. The State of Texas

TOPICS

- appellate procedure
- right to counsel
- criminal procedure

PRACTICE AREAS

- appellate procedure
- criminal procedure
- right to counsel

QUESTIONS PRESENTED

1. What procedure should the appellate court require when an appellant's brief has not been filed?

2. What steps are required to protect an indigent appellant's right to effective representation when the failure to file a brief may reflect abandonment by counsel?

HOLDINGS

1. When appellant's brief has not been filed, the trial court must conduct a hearing to determine why the brief has not been filed, whether appellant desires to prosecute the appeal, whether appellant is indigent, and, if appellant is not indigent, whether retained counsel has abandoned the appeal.
2. If appellant is indigent, the trial court must take measures necessary to assure effective representation, which may include appointing new counsel.

KEY QUOTATIONS

"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."

"This appeal is ABATED to allow the trial court to comply with the above order."

FACTUAL BACKGROUND

Appellant's brief had not been filed in the pending criminal appeal. The appellate court required a hearing to determine whether appellant wished to prosecute the appeal, whether he was indigent, and, if not indigent, whether retained counsel had abandoned the appeal.

PROCEDURAL HISTORY

Kloepfer appealed from the 296th Judicial District Court of Collin County in trial court cause number 296-81623-2012. Because appellant's brief had not been filed, the Fifth District ordered the trial court to conduct a hearing regarding the reason for the missing brief, appellant's desire to prosecute the appeal, indigency, and possible abandonment by retained counsel. The appellate court abated the appeal and ordered transmission of the hearing record within thirty days.

DISPOSITION

other

REMAND INSTRUCTIONS

The trial court must conduct a hearing, make appropriate findings and recommendations, determine whether appellant wishes to prosecute the appeal, determine whether appellant is indigent, and, if appellant is not indigent, determine whether retained counsel has abandoned the appeal. If appellant is indigent, the trial court must take measures necessary to assure effective representation, potentially including appointment of new counsel. The trial court must transmit the proceedings record, including written findings and recommendations, to the appellate court within thirty days. The appeal is abated and is to be reinstated thirty days after the order or when the findings are received, whichever is earlier.

CASES CITED

- Meza v. State, 742 S.W.2d 708 (Tex. App.—Corpus Christi 1987, no pet.) (per curiam)

OPINION

Aaron Howard Kloepper v. State

PER CURIAM.

Order entered October 31, 2013 In The Court of Appeals Fifth District of Texas at Dallas No. 05-13-00723-CR AARON HOWARD KLOEPFER, Appellant V. THE STATE OF TEXAS, Appellee
On Appeal from the 296th Judicial District Court Collin County, Texas Trial Court Cause No. 296-81623-2012

ORDER

The Court ORDERS the trial court to conduct a hearing to determine why appellant's brief has not been filed. In this regard, the trial court shall make appropriate findings and recommendations and determine whether appellant desires to prosecute the appeal, whether appellant is indigent, or if not indigent, whether retained counsel has abandoned the appeal. See TEX. R. APP. P. 38.8(b). If the trial court cannot obtain appellant's presence at the hearing, the trial court shall conduct the hearing in appellant's absence. See Meza v. State, 742 S.W.2d 708 (Tex. App.—Corpus Christi 1987, no pet.) (per curiam). 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. We ORDER the trial court to transmit a record of the proceedings, which shall include written findings and recommendations, to this Court within THIRTY DAYS of the date of this order. This appeal is ABATED to allow the trial court to comply with the above order. The appeal shall be reinstated thirty days from the date of this order or when the findings are received, whichever is earlier.

/s/ DAVID EVANS

JUSTICE