

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

Albert Nicolas v. State

Nicolas v. State · No. 04-13-00834-CR & 04-13-00835-CR · Decided February 3, 2014

SUMMARY

The Texas Fourth Court of Appeals addresses an appeal from an order concerning a motion to correct prior criminal judgments and remove court costs or attorney fees based on indigency. The court noted that the appellant appeared to have received the requested relief and ordered him to identify the issues he intended to raise, warning that the appeals would be dismissed as moot if he failed to do so.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth District, San Antonio
WRITING FOR THE COURT	Marialyn Barnard
JURISDICTION	Texas
DECIDED	February 3, 2014
DOCKET	04-13-00834-CR & 04-13-00835-CR
DISPOSITION	other
PROCEDURAL POSTURE	Appellant appealed after the trial court granted relief on his motion seeking correction of prior judgments and removal of attorney fees and related amounts.
PRECEDENTIAL VALUE	unpublished order
PARTIES	Albert Nicolas v. The State of Texas

TOPICS

mootness

appellate procedure

post-conviction relief

criminal procedure

PRACTICE AREAS

criminal appellate procedure

post-conviction relief

QUESTIONS PRESENTED

1. Whether the appeals should be dismissed as moot because the trial court appeared to have granted all relief requested by the appellant.
2. Whether the appellant intended to raise any issue that would prevent dismissal of the appeals as moot.

KEY QUOTATIONS

“Accordingly, we ORDER appellant to file in this court on or before February 24, 2014 a statement of the issues he intends to raise on appeal.”

FACTUAL BACKGROUND

Nicolas sought correction of judgments in two prior convictions to remove attorney fees and related financial obligations because he had been indigent. The trial court found him indigent and stated that he was no longer required to pay the fine and court costs identified in the judgments, apparently granting the relief he requested.

PROCEDURAL HISTORY

Nicolas filed a motion for nunc pro tunc relief, a motion to set, and a motion for a bench warrant in the trial court. The trial court found him indigent and ordered that he was no longer required to pay the fine and court costs at issue. Nicolas nevertheless filed notices of appeal, and the court of appeals ordered him to identify the issues he intended to raise because the appeals appeared moot.

DISPOSITION

other

OPINION

PER CURIAM.

The State of TexasAppellee/s Fourth Court of Appeals San Antonio, Texas February 3, 2014 Nos. 04-13-00834-CR & 04-13-00835-CR Albert NICOLAS, Appellant v. THE STATE OF TEXAS, Appellee From the 198th Judicial District Court, Kerr County, Texas Trial Court Nos. B93-6 & B93-7 Honorable M. Rex Emerson, Judge Presiding ORDER Appellant filed a “Motion for Nunc Pro Tunc to Correct Judgments and Sentences, Motion to Set, Motion for Bench Warrant.” In this motion, appellant sought to have the trial court correct the judgments in his prior convictions “to remove the attorney fees” imposed because appellant was at all times indigent.

By order signed October 1, 2013, the trial court found appellant was indigent and stated appellant “is no longer required to pay the fine, court cost due to Kerry County, as required in the Judgment recorded in the above entitled cause in the amount of \$5,766.86.” Despite receiving what appears to be all the relief he sought by way of his motion, appellant timely filed a notice of appeal.

Based on our initial review of the clerk’s records, it appears appellant’s appeals are moot – given that it appears he received the relief he sought. However, we cannot make such a determination until we know the issues appellant intends to raise on appeal.

Accordingly, we ORDER appellant to file in this court on or before February 24, 2014 a statement of the issues he intends to raise on appeal. If appellant does not file a statement of issues as

ordered, we will dismiss his appeal as moot, given that it appears he has received all the relief requested in his “Motion for Nunc Pro Tunc to Correct Judgments and Sentences, Motion to Set, Motion for Bench Warrant.” We further order the clerk of this court to serve a copy of this order on appellant, all counsel, and the trial court. _____ Marialyn Barnard, Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 3rd day of February, 2014. _____ Keith E. Hottle Clerk of Court