

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Curtis Dewight Nelson v. State

No. 05-18-00890-CR · No. 05-18-00890-CR · Decided July 26, 2019

SUMMARY

The Texas Court of Appeals, Fifth District at Dallas reinstated Curtis Dewight Nelson's criminal appeal after an abatement hearing. The court removed appointed counsel Don Jarvis, Jr., appointed Jeremy Oney as new counsel, and ordered Nelson's appellate brief filed by September 20, 2019.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
JURISDICTION	Texas
DECIDED	July 26, 2019
DOCKET	05-18-00890-CR
DISPOSITION	other
PROCEDURAL POSTURE	The court had abated the criminal appeal because appellant's brief was not filed by the deadline. After a trial-court hearing concerning the status of the appeal and appointed counsel, the appellate court reinstated the appeal, removed prior appointed counsel, appointed new counsel, and set a new briefing deadline.
STANDARD OF REVIEW	Not applicable; the order addresses appellate administration and appointment of counsel.
PRECEDENTIAL VALUE	Published order; no reporter citation appears in the source text.
PARTIES	Curtis Dewight Nelson v. The State of Texas

TOPICS

[appellate procedure](#) [criminal procedure](#) [right to counsel](#)

PRACTICE AREAS

[criminal appellate procedure](#) [appointed counsel](#)

QUESTIONS PRESENTED

1. Whether the appeal should be reinstated after a hearing established that appellant wished to prosecute it and had not abandoned it.
2. Whether prior appointed counsel should be removed and replacement counsel appointed because counsel failed to communicate with the trial court and failed to file appellant's brief.

HOLDINGS

1. The appeal should be reinstated because appellant wished to prosecute the appeal and had not abandoned it.
2. Prior appointed counsel was properly removed and new counsel appointed after counsel failed to respond to the trial court and did not file appellant's brief.

FACTUAL BACKGROUND

Appellant's appointed counsel, Don Jarvis, Jr., did not file appellant's brief by the December 26, 2018 deadline and did not respond to the trial court's numerous attempts to contact him. Counsel was out of the country and did not attend the July 22, 2019 hearing. The trial court found that appellant had not abandoned the appeal, removed Jarvis, and appointed Jeremy Oney as replacement counsel.

PROCEDURAL HISTORY

Appellant's brief was initially due December 26, 2018, but was not filed. The appellate court abated the appeal for a hearing, and on July 22, 2019, the trial court found that appellant wished to prosecute the appeal, that appointed counsel had failed to respond to the court's contacts and was out of the country, and that new counsel should be appointed. The trial court removed Don Jarvis, Jr. and appointed Jeremy Oney; the appellate court then reinstated the appeal and ordered the brief due September 20, 2019.

DISPOSITION

other

REMAND INSTRUCTIONS

The appellate clerk was directed to remove Don Jarvis, Jr. and list Jeremy Oney as appointed counsel of record. Appellant's brief was ordered due on or before September 20, 2019.

OPINION

Curtis Dewight Nelson v. State

PER CURIAM.

Order entered July 26, 2019 In The Court of Appeals Fifth District of Texas at Dallas No. 05-18-00890-CR CURTIS DEWIGHT NELSON, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 59th Judicial District Court Grayson County, Texas Trial Court Cause No. 068322
ORDER

We REINSTATE this appeal. We abated for a hearing to determine why appellant's brief, initially

due on December 26, 2018, had not been filed. On July 22, 2019, the trial court held a hearing and found (1) appellant wants to prosecute this appeal and has not abandoned the appeal, (2) the trial court had attempted to reach Mr. Jarvis on “numerous occasions” but counsel had not responded to the court’s attempts to contact him, (3) appointed counsel Don Jarvis, Jr. was out of the country and did not attend the hearing, (4) the State recommended Mr. Jarvis be removed and new counsel appointed, (5) Mr. Jarvis was removed, and (6) new counsel was appointed. The trial court then appointed Jeremy Oney. We DIRECT the Clerk of the Court to remove Don Jarvis, Jr. and list Jeremy Oney as appointed counsel of record for appellant. We ORDER appellant’s brief due on or before September 20, 2019. We DIRECT the Clerk to send copies of this order to the Honorable Larry Phillips, Presiding Judge, 59th Judicial District Court; to Don Jarvis, Jr.; to Jeremy Oney; and to the Grayson County District Attorney’s Office.

/s/ ROBERT D. BURNS, III

CHIEF JUSTICE