

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

Richard Vargas v. State

No. 04-16-00212-CR · No. 04-16-00212-CR · Decided June 16, 2016

SUMMARY

The Fourth Court of Appeals granted appellate counsel's request to obtain the trial court's Rule 25.2 certification from the appellant and directed the Milam County Clerk's Office to file a supplemental clerk's record within 10 days. The court also granted the appellant's motion for an extension of time to file the brief, making it due 30 days after the supplemental clerk's record is filed.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth District, San Antonio
WRITING FOR THE COURT	Rebeca C. Martinez
JURISDICTION	Texas
DECIDED	June 16, 2016
DOCKET	04-16-00212-CR
DISPOSITION	other
PROCEDURAL POSTURE	Appellant sought permission for appellate counsel to obtain the trial court's Rule 25.2 certification and requested an extension of time to file the appellate brief.
PRECEDENTIAL VALUE	published
PARTIES	Richard Vargas v. The State of Texas

TOPICS

appellate procedure

criminal procedure

PRACTICE AREAS

appellate procedure

criminal procedure

QUESTIONS PRESENTED

1. Whether appellate counsel should be permitted to obtain the trial court's Rule 25.2 certification from appellant and submit it to the district clerk.

2. Whether appellant should receive an extension of time to file the appellate brief pending preparation and filing of the supplemental clerk's record.

HOLDINGS

1. The court granted appellate counsel permission to obtain the trial court's certification from appellant and ordered the Milam County Clerk's Office to accept it and prepare, certify, and file a supplemental clerk's record containing the certification.
2. The court granted appellant's motion for an extension of time, making the brief due thirty days after the trial court clerk filed the supplemental clerk's record containing the Rule 25.2 certification.

KEY QUOTATIONS

“The request is GRANTED. The Milam County Clerk’s Office is ORDERED to accept the trial court’s certification obtained by appellate counsel and to prepare, certify, and file a supplemental clerk’s record containing the trial court’s certification pursuant to Rule 25.2 within 10 days from the date of this order.”

FACTUAL BACKGROUND

The trial court clerk had not filed the certification required by Texas Rule of Appellate Procedure 25.2 because the district clerk's office was unable to procure it from trial counsel. Appellant's appellate counsel requested permission to obtain the certification directly from appellant and submit it to the Milam County District Clerk's Office.

PROCEDURAL HISTORY

The court had previously ordered the trial court clerk to prepare and file a supplemental clerk's record containing the trial court's certification under Texas Rule of Appellate Procedure 25.2. The district clerk reported that the certification had not been obtained from trial counsel, after which appellate counsel requested permission to obtain it from appellant. The court granted that request, ordered the Milam County Clerk's Office to accept and file the certification within ten days, and granted an extension of time to file appellant's brief.

DISPOSITION

other

REMAND INSTRUCTIONS

The Milam County Clerk's Office was ordered to accept the certification obtained by appellate counsel and prepare, certify, and file a supplemental clerk's record containing the certification under Rule 25.2 within ten days of the order.

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas June 16, 2016 No. 04-16-00212-CR Richard VARGAS, Appellant v. The STATE of Texas, Appellee From the 20th District Court, Milam County, Texas Trial Court No. CR24573 The Honorable John Youngblood, Judge Presiding ORDER On May 26, 2016, we ordered the trial court clerk to prepare, certify, and file a supplemental clerk's record containing the trial court's certification pursuant to Rule 25.2.

See TEX. R. APP. P. 25.2(d). The district clerk responded by filing a notification of late record and explaining that the clerk's office had been unable to procure the certification from the trial attorney. Additionally, appellant's counsel filed a response in which he requested permission for him, rather than trial counsel, to obtain the certification from appellant and provide it to the Milam County District Clerk's Office.

The request is GRANTED. The Milam County Clerk's Office is ORDERED to accept the trial court's certification obtained by appellate counsel and to prepare, certify, and file a supplemental clerk's record containing the trial court's certification pursuant to Rule 25.2 within 10 days from the date of this order.

We further GRANT appellant's motion for an extension of time to the file the brief. The brief will be due 30 days from the date the trial court clerk files a supplemental clerk's record containing the trial court's certification pursuant to Rule 25.2. _____ Rebeca C. Martinez, Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 16th day of June, 2016. _____ Keith E. Hottle Clerk of Court