

Order filed August 31, 2012



In The

Eleventh Court of Appeals

No. 11-12-00038-CR

DAVID BOCANEGRA, Appellant

V.

STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 4

Travis County, Texas

Trial Court Cause No. C1CR11205953

ORDER

The jury convicted appellant, David Bocanegra, of the offense of assault-family violence. On November 4, 2011, the trial court assessed punishment and sentenced appellant to county jail for 270 days. Harry W. Deckard filed a notice of appeal on appellant's behalf and also filed a motion for extension of time to file the notice of appeal. The motion was timely received in the transferring court of appeals and was granted by this court. This appeal has become unduly stalled due to the failure of this court to receive (1) a supplemental clerk's record containing the trial court's certification of appellant's right of appeal and (2) appellant's brief.

This court has sent four letters notifying the County Clerk of Travis County, the trial court, and the parties that a supplemental clerk's record containing the trial court's certification of appellant's right of appeal, as required by TEX. R. APP. P. 25.2(a)(2) and (d), was due for filing in this court. Our letters were dated February 9, March 12, March 20, and May 24, 2012. On May 24, 2012, this court granted appellant's request for an extension of time to file a certificate of appellant's right of appeal and set a due date of June 12, 2012, for the supplemental clerk's record. This court has yet to receive a supplemental clerk's record containing the trial court's certification of appellant's right of appeal. Rule 25.2(a)(2) provides, "The trial court *shall* enter a certification of the defendant's right of appeal each time it enters a judgment of guilt or other appealable order" (emphasis added). Rule 25.2(d) provides that the "record must include" the certification. The proper form for the certification is found in Appendix D of the Texas Rules of Appellate Procedure and may also be found on the website of the Court of Criminal Appeals.¹

Additionally, appellant's brief was originally due on April 11, 2012. On May 7, counsel filed an unopposed motion to extend the time to file appellant's brief. This court granted the motion, extending the due date to July 16, 2012. We have not received appellant's brief, nor have we received a second motion for extension of time to file appellant's brief.

We abate the appeal and remand the cause to the trial court. The trial court is directed to enter a certification of appellant's right of appeal in this case in compliance with Rule 25.2(a)(2) and (d) of the Texas Rules of Appellate Procedure. The trial court is also directed to conduct a hearing pursuant to TEX. R. APP. P. 38.8(b) to determine the following:

1. Whether appellant desires to prosecute his appeal;
2. Whether appellant is indigent;
3. If not indigent, whether appellant has retained counsel;
4. Whether counsel has abandoned the appeal; and
5. Whether new counsel should be appointed for appeal.

The trial court is directed to make appropriate findings and recommendations pursuant to Rule 38.8(b). The trial court clerk is directed to prepare and forward to this court a supplemental clerk's record containing (1) the trial court's certification of appellant's right of appeal and also

¹<http://www.cca.courts.state.tx.us/Forms/CertificationOfDefendantsRightsAppendix.pdf>

(2) any findings, recommendations, and orders made by the trial court in conjunction with the hearing. Additionally, the court reporter is directed to prepare and forward to this court the reporter's record from the hearing. The supplemental records are due to be filed in this court on or before October 1, 2012.

The appeal is abated.

PER CURIAM

August 31, 2012

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,
McCall, J., and Kalenak, J.