

*Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio*



MEMORANDUM OPINION

No. 04-08-00706-CR

Michael **McCARDELL**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 198th Judicial District Court, Kimble County, Texas
Trial Court No. 07-1623
Honorable Emil Karl Prohl, Judge Presiding

PER CURIAM

Sitting: Alma L. López, Chief Justice
Catherine Stone, Justice
Steven C. Hilbig, Justice

Delivered and Filed: December 23, 2008

DISMISSED

Michael McCardell filed a notice of appeal from the trial court's judgment. The clerk's record was due September 19, 2008, but was not filed. *See* TEX. R. APP. P. 35.2. The Kimble County District Clerk responded to our notice that the record was late by stating the record was not filed because McCardell had not paid or made arrangements to pay the clerk's fee to prepare the record and is not entitled to appeal without paying the fee. On November 14, 2008, we ordered McCardell

to provide written proof to this court on or before December 1, 2008 that either (1) the clerk's fee has been paid or arrangements had been made to pay the clerk's fee; or (2) he is entitled to appeal without paying the clerk's fee. We cautioned appellant that if he failed to respond within the time provided, his appeal would be dismissed for want of prosecution. *See* TEX. R. APP. P. 37.3(b). McCardell has not filed a response and the clerk's record has not been filed.

We therefore **order** this appeal dismissed for want of prosecution.

PER CURIAM

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