

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00491-CR

JAMAAL CLARENCE STATEN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 08-04173

MEMORANDUM OPINION

A jury convicted Jamaal Clarence Staten of aggravated assault and then assessed a seven year sentence. Staten voluntarily absented himself from the courtroom throughout the trial. The trial court proceeded to pronounce Staten's sentence although he was not present.

In a separate opinion, issued on the same day as this opinion, we addressed whether we had jurisdiction to consider Staten's appeal from the trial court's revocation of his community supervision for possession of marijuana. *See Staten v. State*, No. 09-09-00490-CR (Tex. App.–Beaumont July 7, 2010). We decided to abate that appeal and remand the cause to the trial court to allow the trial court to orally pronounce Staten's

sentence in his presence because sentencing a defendant in his presence is required to vest our court with jurisdiction over his appeal. *Id.*; see *Casias v. State*, 503 S.W.2d 262, 265 (Tex. Crim. App. 1973); *Meachum v. State*, 273 S.W.3d 803, 805-06 (Tex. App.—Houston [14th Dist.] 2008, no pet.); see also TEX. CODE CRIM. PROC. ANN. art. 42.03 § 1(a) (Vernon Supp. 2009). Therefore, for the same reasons we abated the appeal in appellate cause number 09-09-00490-CR, we abate this appeal.¹

We abate Staten’s appeal and remand Cause Number 09-09-00491-CR to the trial court. Upon remand, the trial court shall cause notice of a hearing to be given and thereafter, pronounce Staten’s sentence in his presence. A court reporter’s record of the sentencing shall be prepared and filed in the record of this appeal, together with a supplemental clerk’s record containing the trial court’s judgment. The appeal will be reinstated when the supplemental records are filed. Upon reinstatement, this Court will consider the merits of the issues raised in Staten’s brief.

APPEAL ABATED AND CAUSE REMANDED.

HOLLIS HORTON
Justice

Submitted on June 16, 2010
Opinion Delivered July 7, 2010
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.

¹Because jurisdiction is fundamental, we may *sua sponte* address the issue. See *State v. Roberts*, 940 S.W.2d 655, 657 (Tex. Crim. App. 1996), *overruled on other grounds by State v. Medrano*, 67 S.W.3d 892, 894 (Tex. Crim. App. 2002).