



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00109-CR

TIMOTHY LOVINGTON, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 137th District Court
Lubbock County, Texas
Trial Court No. 2015-407,978, Honorable John J. "Trey" McClendon III, Presiding

September 6, 2016

ABATEMENT AND REMAND

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

Appellant Timothy Lovington appeals his conviction for evading arrest using a motor vehicle. Appellant's brief was due on August 1, 2016. However, appellant failed to file a brief by this deadline. By letter dated August 15, 2016, the court notified appellant that his brief was overdue and admonished appellant's counsel that failure to file a brief by August 25, 2016, would result in the appeal being abated and the cause remanded to the trial court for further proceedings without further notice. See TEX. R. APP. P. 38.8(b)(2), (3). To date, appellant has neither filed a brief nor had any further communications with this court.

Accordingly, we abate this appeal and remand the cause to the 137th District Court of Lubbock County (trial court) for further proceedings. Upon remand, the trial court shall determine the following:

1. whether appellant desires to prosecute the appeal;
2. whether appellant is indigent;
3. why a timely appellate brief has not been filed on behalf of appellant;
4. whether appellant has been denied the effective assistance of counsel due to counsel's failure to timely file an appellate brief, see *Ex parte Briggs*, 187 S.W.3d 458, 467 (Tex. Crim. App. 2005) (holding "a reasonably competent attorney—regardless of whether he is retained or appointed—must seek to advance his client's best defense in a reasonably competent manner");
5. whether new counsel should be appointed; and
6. if appellant desires to continue the appeal, the date the court may expect appellant's brief to be filed.

The trial court is also directed to enter such orders necessary to address the aforementioned questions. So too shall it include its findings on those matters in a supplemental record and cause that record to be filed with this court by September 30, 2016. If it is determined that appellant desires to proceed with the appeal, is indigent, and has been denied the effective assistance of counsel, the trial court may appoint him new counsel; the name, address, and phone number of any new counsel appointed shall be included in the aforementioned findings. Should further time be needed to perform these tasks, then same must be requested before September 30, 2016.

It is so ordered.

Per Curiam

Do not publish.