



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

No. 07-16-00137-CR
No. 07-16-00138-CR

DAVID FRANKLIN WEST, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 69th District Court
Dallam County, Texas
Trial Court No. 4471; Honorable Ron Enns, Presiding

October 18, 2016

ABATEMENT AND REMAND

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

Appellant, David Franklin West, was convicted of two counts of possession of a controlled substance: tetrahydrocannabinol, in an amount of more than 400 grams,¹

¹ TEX. HEALTH & SAFETY CODE ANN. § 481.116(e) (West 2010).

and methamphetamine, in an amount of more than one gram but less than four grams.² He was sentenced to thirty years imprisonment and assessed a \$10,000 fine for the tetrahydrocannabinol possession and ten years imprisonment and a \$10,000 fine for the methamphetamine possession. Before trial, Appellant's court-appointed attorney was allowed to withdraw and Appellant was permitted to represent himself at trial.³ Following his convictions, Appellant timely filed a *pro se* notice of appeal. He did not request appointment of appellate counsel and none has been appointed.

The clerk's record and reporter's record have been filed and Appellant's brief was originally due on June 6, 2016. Because Appellant was not represented by counsel on appeal, we *sua sponte* granted him an extension of time to file his brief until July 6. Subsequently, Appellant twice moved for additional time to prepare his brief and we extended the briefing deadline, first to August 26, and then to October 10. With the last extension, we admonished Appellant that no further extensions would be granted. To date, no appellate brief has been filed on behalf of Appellant.

Now pending before the court is Appellant's most recent *pro se* motion entitled *Motion to Postpone Argument*, wherein he states that he is appearing "as the legal entity/article of commerce represented by the natural man & sovereign Citizen of one of the several States united in America under 15 U.S. statute at large July 27, 1868 expatriation statute with all rights reserved without prejudice under the common-law pursuant to the Uniform Commercial Code at UCC1-308/1-207 & UCC1-103." He

² TEX. HEALTH & SAFETY CODE ANN. § 481.116(c) (West 2010).

³ Appellant signed a waiver of his right to representation by counsel and a request to proceed without an attorney which was approved by the trial court on February 8, 2016.

further avers that “[b]ecause the states accepted and passed the Uniform Commercial Code, they converted state Citizens into ‘PERSONS’ (legal entities/articles of commerce/legal fictions) and the States into VESSELS of THE UNITED STATES placing the States and state Citizens under Maritime Law.” In disposing of this motion, we must be heedful of the law applicable to an appellant’s right (or lack thereof) to proceed on appeal without the assistance of counsel.

APPLICABLE LAW

An accused is entitled to the assistance of counsel at trial and through the conclusion of his direct appeal. *Buntion v. Harmon*, 827 S.W.2d 945, 948 (Tex. Crim. App. 1992). While criminal defendants have a constitutional right to conduct their own defense at trial, if they voluntarily and intelligently elect to do so, the Sixth Amendment right to self-representation at trial does not extend to the appeal stage, nor does the Texas constitution provide such a right on appeal. See *Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) (holding that a criminal defendant has a federal constitutional right of self-representation at trial when he voluntarily and intelligently elects to do so); *Martinez v. California*, 528 U.S. 152, 163, 120 S. Ct. 684, 145 L. Ed.2d 597 (2000) (finding no constitutional right of self-representation on direct appeal from a criminal conviction because the government’s interest in the fair administration of justice outweighs any invasion of appellant’s self-representation interest); *Hadnot v. State*, 14 S.W.3d 348, 350 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (“No Texas court has recognized a state constitutional right to self-representation on direct appeal.”).

Notwithstanding this lack of a constitutional right to self-representation on appeal, this court does have discretion to permit an appellant to represent himself on appeal if he can do so without interfering with the administration of the appellate process. See *Bibbs v. State*, No. 07-10-0300-CR, 2011 Tex. App. LEXIS 9490 at *4 (Tex. App.—Amarillo Dec. 2, 2011, order) (per curiam). Our exercise of that discretion depends on a case-by-case analysis of the best interest of the appellant, the State, and the administration of justice. *Id.* In that regard, we are guided by the principle that an appellant cannot use his desire for self-representation as a means of manipulating or obstructing the orderly procedure of the court or interfering with the fair administration of justice. *Martinez v. State*, 163 S.W.3d 88, 90 (Tex. App.—Amarillo 2006, order).

ANALYSIS

Because Appellant has been unable to prepare and file an appellate brief despite the numerous extensions we have granted, and because the pleading currently before the court is unintelligible and incomprehensible as a legal document raising serious questions concerning whether allowing Appellant to represent himself on appeal is in his best interest, as well as that of the State and the administration of justice, we abate the appeal and remand the cause to the trial court for further proceedings. See TEX. R. APP. P. 38.8(b)(2). On remand, the trial court shall use whatever means it finds necessary, which may include noticing and conducting a hearing, to determine the following:

1. whether Appellant still desires to prosecute the appeal;
2. whether Appellant is indigent and entitled to the appointment of appellate counsel;

3. whether Appellant still desires to represent himself on appeal;
4. if Appellant wishes to represent himself, whether Appellant's decision to do so is competently, voluntarily, and intelligently made, including whether Appellant is aware of the dangers and disadvantages of self-representation on appeal, see *Hubbard v. State*, 739 S.W.2d 341, 345 (Tex. Crim. App. 1987); and
5. if Appellant wishes to represent himself, whether allowing him to do so is in his best interest, the State's best interest, and is in furtherance of the proper administration of justice.

Should the trial court determine that Appellant wants to continue the appeal, is indigent, and entitled to appointed counsel, and if the trial court determines that Appellant does not desire to continue to represent himself on appeal, OR determines that his doing so is not in the best interest of Appellant, the State, or the administration of justice, the trial court shall appoint counsel to represent Appellant in this appeal. In that event, counsel's name, address, email address, telephone number, and State Bar of Texas identification number shall be provided to the clerk of this court. Newly-appointed counsel shall file an appellate brief within thirty days of the date of appointment.

If the trial court does not appoint counsel for Appellant but instead recommends that this court permit Appellant to represent himself on appeal, it shall determine, and express as a finding, when this court reasonably can expect to receive an appellate brief from Appellant. If the trial court recommends that we permit Appellant to represent himself on appeal, we will review that recommendation and issue further orders on reinstatement of the appeal.

Whether the trial court appoints counsel for Appellant, the trial court shall issue findings and recommendations expressing its determinations on the issues listed above. The trial court shall execute findings of fact and conclusions of law and shall cause its findings, conclusions, and any necessary orders to be included in a supplemental clerk's record to be filed with the clerk of this court by December 2, 2016.

It is so ordered.

Per Curiam

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