



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

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No. 07-16-00204-CR

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**CHRISTOPHER AARON RESENDES, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 47th District Court  
Potter County, Texas  
Trial Court No. 70,061-A, Honorable Edward Lee Self, Presiding

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**December 2, 2016**

**ABATEMENT AND REMAND**

**Before CAMPBELL and HANCOCK and PIRTLE, JJ.**

Appellant, Christopher Aaron Resendes, appeals his conviction of possession of a controlled substance in an amount of one gram or more but less than four grams,<sup>1</sup> and sentence to ten years' incarceration and fine of \$5,000. The appellate court clerk received and filed the trial court clerk's record on August 16, 2016. The official court reporter filed the reporter's record with the appellate court clerk on September 7. Consequently, appellant's brief was originally due to be filed on or before October 7, but

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<sup>1</sup> See TEX. HEALTH & SAFETY CODE ANN. § 481.115(c) (West 2010).

we extended the briefing deadline to November 28. No brief was filed on appellant's behalf. Instead, on November 29, appellant's retained counsel, Nick Olguin, moved to withdraw as counsel for appellant and requested that we abate this appeal and remand the cause to the trial court for appointment of new appellate counsel. According to the motion, appellant desires to raise the issue of ineffective assistance of counsel and, as Mr. Olguin was also his trial counsel, wants a different attorney to review the record to potentially assert the issue on appeal.

Therefore, we now abate this appeal and remand the cause to the trial court. See TEX. R. APP. P. 38.8(b)(2). Appellant's counsel may file a motion to withdraw as counsel with the trial court. Upon remand, the judge of the trial court is directed to immediately cause notice to be given of and to conduct a hearing to determine: (1) whether appellant desires to prosecute this appeal; (2) if appellant desires to prosecute this appeal, whether appellant is indigent; (3) whether present counsel for appellant has abandoned the appeal; (4) if appellant desires to prosecute this appeal and is indigent, whether appellant's present counsel should be replaced; and (5) what orders, if any, should be entered to assure the filing of appropriate notices and documentation to dismiss appellant's appeal if appellant does not desire to prosecute this appeal or, if appellant desires to prosecute this appeal, to assure that the appeal will be diligently pursued. If the trial court determines that the present attorney for appellant should be replaced, the trial court should cause the Clerk of this Court to be furnished the name, address, email address, and State Bar of Texas identification number of the newly-appointed or newly-retained attorney.

The trial court is directed to: (1) conduct any necessary hearings; (2) make and file findings of fact, conclusions of law, and recommendations addressing the determinations identified above and cause them to be included in a supplemental clerk's record; (3) cause the hearing proceedings to be transcribed and included in a supplemental reporter's record; (4) have a record of the proceedings made to the extent any of the proceedings are not included in the supplemental clerk's record or the supplemental reporter's record; and (5) cause the records of the proceedings to be sent to this Court. See TEX. R. APP. P. 38.8(b)(3). In the absence of a request for extension of time from the trial court, the supplemental clerk's record, supplemental reporter's record, and any additional proceeding records, including any orders, findings, conclusions, and recommendations, are to be sent so as to be received by the Clerk of this Court not later than Tuesday, January 17, 2017.

Per Curiam

Do not publish.