



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

No. 07-16-00237-CR

DAVID TRUMAN PHILLIPS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 359th District Court
Montgomery County, Texas
Trial Court No. 15-05-05325-CR, Honorable Kathleen Hamilton, Presiding

December 8, 2016

MEMORANDUM OPINION

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

Appellant David Truman Phillips appeals his conviction for driving while intoxicated, third or more offense. Appellant's brief was originally due on October 3, 2016, but we granted appellant three extensions to file it. By letter dated November 18, 2016, we admonished appellant's counsel that failure to file a brief by December 2, 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's counsel has not filed a brief, but has instead filed a fourth motion for extension seeking an additional 28 days to complete the brief. We deny the motion.

Accordingly, we abate this appeal and remand the cause to the 359th District Court of Montgomery 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. 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");
4. whether new counsel should be appointed; and
5. if appellant desires to continue the appeal, the final date on which appellant will file the appellant's brief.

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 January 9, 2017. 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, email 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 January 9, 2017.

It is so ordered.

Per Curiam

Do not publish.