



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

---

No. 07-17-00025-CR

---

**JOHN DAVID FRY, JR., APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

---

On Appeal from the County Criminal Court No. 1  
Tarrant County, Texas  
Trial Court No. 1423763, Honorable David E. Cook, Presiding

---

**May 17, 2017**

**ORDER OF ABATEMENT AND REMAND**

Before QUINN, CJ., and CAMPBELL and PIRTLE, JJ.

Appellant John David Fry, Jr., was convicted of driving while intoxicated, enhanced to a class A misdemeanor by a prior conviction for the same offense,<sup>1</sup> and sentenced to 180 days in county jail with an \$800 fine. The trial court suspended appellant's sentence in favor of community supervision for twenty months. Appellant's retained counsel filed a notice of appeal from the trial court's judgment.

---

<sup>1</sup> TEX. PENAL CODE ANN. § 49.04(a), 49.09(a) (West Supp. 2016).

The appellate record was due on April 11, 2017. The clerk's record was timely filed. However, the reporter notified this Court that appellant had not made acceptable payment arrangements for the reporter's record by this deadline. See TEX. R. APP. P. 35.3(b)(3). By letter on April 11, we granted an extension of time to file the reporter's record and directed appellant to make acceptable payment arrangements by April 21. Failure to do so, we advised, could 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. 37.3(a)(2). This deadline has passed and appellant has not made payment arrangements for the reporter's record or made any response to the Court's letter.

Accordingly, we abate the appeal and remand the cause to the trial court for further proceedings. See TEX. R. APP. P. 37.3(a)(2). On remand, the trial court shall utilize whatever means it finds necessary to determine the following:

- (1) whether appellant desires to prosecute the appeal;
- (2) if appellant desires to prosecute the appeal, whether appellant is indigent;
- (3) whether appellant is entitled to have the reporter's record furnished without charge;
- (4) if appellant is not entitled to have the reporter's record furnished without charge, the date appellant will make acceptable payment arrangements for the reporter's record; and
- (5) what orders, if any, should be entered to assure the filing of appropriate documentation to dismiss appellant's appeal if appellant does not desire to prosecute the appeal, or, if appellant desires to prosecute the appeal, to assure that the reporter's record will be filed promptly and that the appeal will be diligently pursued.

We further direct the trial court to issue findings of fact and conclusions of law addressing the foregoing subjects. Additionally, the trial court shall cause to be

developed 1) a supplemental clerk's record containing the findings of fact and conclusions of law, and 2) a reporter's record transcribing the evidence and argument presented at any hearing held. The trial court shall cause the supplemental clerk's record and reporter's record, if any, to be filed with the clerk of this Court on or before June 16, 2017. Should additional time be needed to perform these tasks, the trial court may request same on or before that date.

It is so ordered.

Per Curiam

Do not publish.