

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00017-CR

Yordanys Avila-Trujillo, Appellant

v.

The State of Texas, Appellee

**FROM THE 274TH DISTRICT COURT OF HAYS COUNTY
NO. CR-17-0881, THE HONORABLE GARY L. STEEL, JUDGE PRESIDING**

ORDER AND MEMORANDUM OPINION

PER CURIAM

This appeal was previously abated on May 16, 2019, because appellant's initial appellate counsel had not filed status reports requested by this Court or responded to our notices, resulting in a delay in filing of the clerk's record and reporter's record. After the trial court conducted the required hearing under Rule 38.8(b) of the Texas Rules of Appellate Procedure, new appellate counsel was appointed.

The clerk's record and reporter's record were subsequently filed, making appellant's brief originally due on July 26, 2019. On August 15, 2019, this Court sent a notice to appellant's new appointed counsel informing him that appellant's brief was overdue and that a failure to file a satisfactory response by August 26, 2019, would result in the referral of this case to the trial court for a hearing under Rule 38.8(b) of the Texas Rules of Appellate Procedure. No response has been filed.

The appeal is abated and remanded to the trial court. The trial court shall conduct a hearing to determine whether appellant desires to prosecute this appeal and, if so, whether counsel has abandoned this appeal. *See* Tex. R. App. P. 38.8(b)(2), (3). The court shall make appropriate written findings and recommendations. *See id.* R. 38.8(b)(2), (3). If necessary, the court shall appoint substitute counsel who will **effectively** represent appellant in this appeal. Following the hearing, which shall be transcribed, the trial court shall order the appropriate supplemental clerk's and reporter's records—including all findings and orders—to be prepared and forwarded to this Court no later than October 14, 2019. *See id.* R. 38.8(b)(3).

It is so ordered September 13, 2019.

Before Justices Goodwin, Baker, and Kelly

Abated and Remanded

Filed: September 13, 2019

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