



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1397-11

JOSEPH MARK DAIGLE, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S MOTION TO EXCEED THE PAGE LIMIT
FOR A PETITION FOR DISCRETIONARY REVIEW
POTTER COUNTY

Per curiam.

ORDER

Appellant was convicted in the 320th Judicial District Court of Potter County of aggravated sexual assault of a child and was sentenced to confinement for 99 years. The Seventh Court of Appeals held that the trial court did not abuse its discretion by denying appellant's request for a mistrial and that appellant was not denied effective assistance of counsel. *Daigle v. State*, No. 07-07-00264-CR, 2010 Tex. App. LEXIS 3897 (Tex. App.—Amarillo May 24, 2010) (mem. op., not designated for publication). On September 19, 2011, this Court granted appellant's pro se Motion For Extension of Time to File a Petition For Discretionary Review and extended his filing deadline to December 19, 2011.

Appellant has now filed a pro se motion to exceed the page limit for petitions for

discretionary review “for the purpose of presenting ‘EXHIBITS’ necessary for the representation of his arguments” for this Court’s consideration. Appellant did not tender these “exhibits” with his motion, but describes them as medical reports, attorney letters, a letter from himself, “and other documents that corroborate his claims and justify his grounds for the relief he is requesting in his Petition for Discretionary Review.”

To the extent that his petition exceeds the statutory limit by the addition of non-record exhibits, appellant’s motion is denied. Texas Rule of Appellate Procedure 68.5 provides, “The petition must be no longer than 15 pages, exclusive of pages containing the table of contents, the index of authorities, the statement regarding oral argument, the statement of the case, the statement of procedural history, and the appendix.” TEX. R. APP. P. 68.5. Rule 68.4(i) provides, “*Appendix*. The petition must contain a copy of any opinion of the court of appeals.” *Id.* R. 68.4(i). Appellant requests an extension of the page limit to attach additional pages to his appendix in excess of 15 pages, but the appendix is statutorily excluded from the 15-page limit for a petition for discretionary review.¹ *See id.* R. 68.5.

Appellant’s motion to extend the page limit is denied.

IT IS SO ORDERED this, the 21st day of November, 2011.

¹ Because appellant did not include his exhibits with his motion, we cannot ascertain whether the exhibits he intends to attach to his petition are part of the record below or extraneous matters that are not part of the record. We note that this Court has held that it “generally does not consider non-record exhibits attached to a party’s pleading.” *Ex parte Pruitt*, 233 S.W.3d 338, 343 n.2 (Tex. Crim. App. 2007); *see also Whitehead v. State*, 130 S.W.3d 866, 872 (Tex. Crim. App. 2004) (“An appellate court may not consider factual assertions that are outside the record, and a party cannot circumvent this prohibition by submitting an affidavit for the first time on appeal.”) (internal citations omitted).

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