

AFFIRMED and Opinion Filed August 29, 2022



**In The
Court of Appeals
Fifth District of Texas at Dallas**

**No. 05-21-00662-CR
No. 05-21-00663-CR**

**PHILLIP LYNN SCHWARTZKOPF, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the County Court at Law No. 1
Collin County, Texas
Trial Court Cause Nos. 001-86990-2020 & 001-86991-2020**

MEMORANDUM OPINION

Before Justices Myers, Carlyle, and Goldstein
Opinion by Justice Goldstein

Following a jury trial, Phillip Lynn Schwartzkopf was found guilty of interfering with emergency request for assistance and assault causing bodily injury. The jury assessed punishment at one day in county jail and a one-dollar fine in each case. The trial court certified that these were not plea-bargain cases and appellant had the right to appeal. He then filed timely notices of appeal.

After the records were filed, appellant's retained counsel filed a motion for abatement. In the motion, counsel stated she had thoroughly reviewed the records and researched potential issues but had been unable to identify any viable issues. She asked the Court to abate the appeals for fourteen-days to allow appellant time to

decide whether to withdraw the appeals, retain other counsel, or request court-appointed counsel.

We granted the request and abated the appeals. Thereafter, retained counsel filed a motion to withdraw. In the motion, she stated that although appellant signed an Agreement for Legal Services in which he agreed to sign a motion to withdraw the appeals if retained counsel was unable to find any viable issues for appeal, appellant had not communicated with her regarding the appeals and had not signed a motion to withdraw the appeals. We granted the motion to withdraw and advised appellant he would be proceeding pro se until he informed the Court of the name and bar number of any counsel representing him. We also notified appellant his brief was due by July 11, 2022 and that the failure to file a brief by that day might result in the appeals being submitted without briefing. When no brief was filed, we ordered the appeals submitted without briefing.

When a pro se appellant does not file a brief in a criminal case, rule 38.8(b) states that the appellate court may consider the appeal without briefs, “as justice may require.” In doing so, we review of the record for fundamental errors. *Lott v. State*, 874 S.W.2d 687, 688 n.2 (Tex. Crim. App. 1994) (discussing the predecessor to rule 38.8(b)). Fundamental errors include: (1) denial of the right to counsel; (2) denial of the right to a jury trial; (3) denial of ten days’ preparation before trial for appointed counsel; (4) absence of jurisdiction over the defendant; (5) absence of subject-matter jurisdiction; (6) prosecution under a penal statute that does not comply with the

Separation of Powers Section of the state constitution; (7) jury charge errors resulting in egregious harm; (8) holding trials at a location other than the county seat; (9) prosecution under an ex post facto law; and (10) comments by a trial judge which taint the presumption of innocence. *See Saldano v. State*, 70 S.W.3d 873, 888–89 (Tex. Crim. App. 2002); *Burton v. State*, 267 S.W.3d 101, 103 (Tex. App.—Corpus Christi–Edinburg 2008, no pet.).

In the interest of justice, we have reviewed the clerk’s and reporter’s records in these appeals for fundamental error and have found none. *See Burton*, 267 S.W.3d at 103.

We affirm the trial court’s judgments.

/Bonnie Lee Goldstein/

BONNIE LEE GOLDSTEIN
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

PHILLIP LYNN
SCHWARTZKOPF, Appellant

No. 05-21-00662-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at
Law No. 1, Collin County, Texas
Trial Court Cause No. 001-86990-
2020.

Opinion delivered by Justice
Goldstein. Justices Myers and
Carlyle participating.

Based on the Court's opinion of this date, we **AFFIRM** the trial court's judgment.

Judgment entered August 29, 2022.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

PHILLIP LYNN
SCHWARTZKOPF, Appellant

No. 05-21-00663-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at
Law No. 1, Collin County, Texas
Trial Court Cause No. 001-86991-
2020.

Opinion delivered by Justice
Goldstein. Justices Myers and
Carlyle participating.

Based on the Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

Judgment entered August 29, 2022