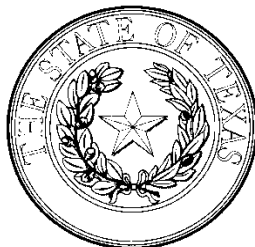


Opinion issued October 6, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-20-00300-CR

GILBERT SALINAS, Appellant
V.
THE STATE OF TEXAS, Appellee

**On Appeal from the 207th District Court
Comal County, Texas¹
Trial Court Case No. CR2016-140**

MEMORANDUM OPINION

On February 13, 2020, after appellant, Gilbert Salinas, with an agreed punishment recommendation from the State, pleaded guilty to the felony offense of

¹ Pursuant to its docket-equalization authority, the Supreme Court transferred this appeal to this Court. *See* Misc. Docket No. 20–9048 (Tex. Mar. 31, 2020); *see also* TEX. GOV'T CODE ANN. § 73.001 (authorizing transfer of cases).

evading arrest or detention in a motor vehicle,² the trial court deferred adjudication of his guilt, placed him on community supervision for eight years, and assessed a fine of \$2,500. The State, alleging violations of the conditions of his community supervision, then moved to adjudicate appellant's guilt. After a hearing, the trial court found the allegations true, found appellant guilty, and assessed his punishment at confinement for six years and a fine of \$2,500. The trial court then suspended appellant's sentence and placed appellant on community supervision for a period of six years. Appellant filed a notice of appeal of the trial court's judgment adjudicating him guilty.

Our review of the appellate record revealed that the clerk's record did not include a copy of the trial court's certification of appellant's right of appeal. *See* TEX. R. APP. P. 25.2(a)(2), 34.5(a)(12), 37.1. An appeal must be dismissed if a certification showing that the defendant has the right of appeal has not been made part of the record. TEX. R. APP. P. 25.2(d); *Dears v. State*, 154 S.W.3d 610, 613 (Tex. Crim. App. 2005).

Further, on April 21, 2020, appellant's retained counsel filed a motion to withdraw as appellate counsel for appellant. However, the motion did not indicate whether appellant desired to pursue his appeal, and if so, whether appellant had obtained substitute counsel. For these reasons, on August 6, 2020, we abated this

² *See* TEX. PENAL CODE ANN. § 38.04(b)(1).

appeal and remanded the case to the trial court to hold a hearing to determine, among other things, whether appellant wished to prosecute his appeal. On September 3, 2020, the trial court held an abatement hearing at which appellant, his retained appellate counsel, and the State were present.³

During the abatement hearing, the trial court noted that the case was remanded to make a determination regarding whether appellant “want[ed] to prosecute” his appeal, and if so, to appoint counsel to represent appellant on appeal. After putting appellant under oath, the trial court questioned appellant regarding whether he wished to pursue his appeal. In response, appellant represented on the record to the trial court that he no longer wished to prosecute the appeal.

Rule 42.2 of the Texas Rules of Appellate Procedure states that an appellant and his attorney “must sign” a motion to dismiss a criminal appeal. TEX. R. APP. P. 42.2(a). However, based on appellant’s statements on the record, and under oath, at the abatement hearing we conclude that good cause exists to suspend the operation of rule 42 in this appeal. TEX. R. APP. P. 2, 42; *Connors v. State*, 966 S.W.2d 108, 110–11 (Tex. App.—Houston [1st Dist.] 1998, pet. ref’d); *see, e.g., Truong v. State*, No. 01-17-00343-CR, 2018 WL 1630177, at *1 (Tex. App.—Houston [1st Dist.] Apr. 5, 2018, no pet.) (mem. op., not designated for publication) (suspending operation of rule 42 and construing abatement record as appellant’s motion to

³ All parties attended the hearing by video teleconference.

dismiss appeal); *Luviano v. State*, No. 01-09-00755-CR, 2011 WL 5428964, at *1 (Tex. App.—Houston [1st Dist.] Nov. 10, 2011, no pet.) (mem. op., not designated for publication) (concluding appellant’s statements provided good cause to suspend rule 42 requirement that appellant sign motion to dismiss and dismissing appeal). We have not yet issued a decision in the appeal. *See* TEX. R. APP. P. 42.2(b).

Accordingly, we reinstate and dismiss the appeal. *See* TEX. R. APP. P. 43.2(f).

We dismiss all other pending motions as moot.

PER CURIAM

Panel consists of Justices Keyes, Lloyd, and Landau.

Do not publish. TEX. R. APP. P. 47.2(b).