

**Affirmed and Memorandum Opinion filed September 9, 2014.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-13-00256-CR**

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**MILTON WHITING, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 174th District Court  
Harris County, Texas  
Trial Court Cause No. 1365102**

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**M E M O R A N D U M    O P I N I O N**

After a jury trial, appellant was convicted of aggravated sexual assault of a child, and sentenced by the trial court to sixty years' confinement in the Institutional Division of the Texas Department of Criminal Justice.

Appellant is represented on appeal by retained counsel. Appellant's brief was originally due July 1, 2013, but no brief has been filed. This court twice abated the appeal and directed the trial court to conduct hearings to determine the reason

for the failure to file a brief pursuant to Texas Rule of Appellate Procedure 38.8(b). The trial court held both hearings, and each time appellant confirmed to the court that he wished counsel to remain his attorney on appeal. At each hearing, counsel advised the court that only minor portions of the brief needed to be completed and he would file the brief within a matter of days. The trial court found appellant is not indigent, and that he desires to have retained counsel represent him on appeal.

On June 24, 2014, this court ordered counsel to file a brief on or before July 18, 2014. The court explained that if counsel did not timely file appellant's brief as ordered, the court would consider the appeal without briefs. *See* Tex. R. App. P. 38.8(b)(4). Still, no brief was filed.

On the basis of the trial court's findings, this court has considered the appeal without briefs. *See* Tex. R. App. P. 38.8(b). We find no fundamental error.

Accordingly, the judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Donovan and Brown.

Do Not Publish — Tex. R. App. P. 47.2(b).