

Court of Appeals
Fourth Court of Appeals District of Texas
San Antonio



MEMORANDUM OPINION

No. 04-12-00587-CR

Herbert Vince **ARCENEUX**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 187th Judicial District Court, Bexar County, Texas
Trial Court No. 2011CR4163
Honorable Raymond Angelini, Judge Presiding

PER CURIAM

Sitting: Rebecca Simmons, Justice
Steven C. Hilbig, Justice
Marialyn Barnard, Justice

Delivered and Filed: October 24, 2012

DISMISSED

On October 10, 2012, appellant Herbert Arceneaux's attorney filed a first motion to withdraw appellant's notice of appeal. The motion was signed by appellant's attorney but not by appellant. On October 11, 2012, counsel filed a second motion to withdraw appellant's notice of appeal that was signed by counsel and appellant.

A motion to withdraw a notice of appeal must be signed by the appellant and appellant's counsel. TEX. R. APP. P. 42.2(a); *Connors v. State*, 966 S.W.2d 108, 110 (Tex. App.—Houston

[1st Dist.] 1998, pet. ref'd) (“[T]he signature of an accused’s counsel on a motion to dismiss [an] appeal, *without the accused’s signature*, [is] insufficient to grant dismissal.”). Appellant’s first motion was not signed by appellant and there is no finding in the appellate record that appellant does not want to continue his appeal; appellant’s first motion is denied. *See* TEX. R. APP. P. 42.2(a); *Faris v. State*, No. 14-09-01041-CR, 2010 WL 3922061, at *1 (Tex. App.—Houston [14th Dist.] Oct. 7, 2010, no pet.) (per curiam) (mem. op., not designated for publication).

Appellant’s second motion is granted; this appeal is dismissed. *See* TEX. R. APP. P. 42.2(a).

PER CURIAM

DO NOT PUBLISH