



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-11-00036-CR

DOYLE DWAYNE SHIFFLETT

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 90TH DISTRICT COURT OF YOUNG COUNTY

MEMORANDUM OPINION¹ AND JUDGMENT

We abated this cause on September 20, 2011 so that trial counsel, Hon. Mark H. Barber, could show cause why he should not be held in contempt of court for failing to complete and file appellant's brief as ordered. At the hearing held September 30, 2011, Barber testified that he had been "hit with four different appeals at the same time"; that "along with [his] practice, [he] just got behind"; and that he had "lost his staff" on August 29, 2011, and had "been in disarray since then." Barber also testified that he was "just about done on" Appellant's

¹See Tex. R. App. P. 47.4.

brief, that he just needed to “edit it one more time,” and that he had planned to file it that day.

But Appellant testified at the hearing that he no longer wishes to pursue this appeal, and he filed “Appellant’s Motion To Dismiss Appeal” below.

Although filed in the trial court instead of this court, that motion otherwise complies with rule 42.2(a) of the rules of appellate procedure. Tex. R. App. P. 42.2(a). No decision of this court having been delivered before we received this motion, we decline to exercise our contempt powers, grant Appellant’s motion to dismiss, and dismiss this appeal. See Tex. R. App. P. 42.2(a), 43.2(f).

PER CURIAM

PANEL: DAUPHINOT, GARDNER, and WALKER, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: October 20, 2011