



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

NO. 02-15-00268-CR

CLAUDIA MARTINEZ

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM CRIMINAL DISTRICT COURT NO. 1 OF TARRANT COUNTY
TRIAL COURT NO. 1335900W

MEMORANDUM OPINION¹

Appellant Claudia Martinez appeals from the trial court's judgment revoking her deferred adjudication community supervision, adjudicating her guilt, and sentencing her to one year's confinement in the state jail division. She did not file a brief. Because our review of the record yields no fundamental error, we affirm the trial court's judgment.

¹See Tex. R. App. P. 47.4.

Procedural History in Trial Court

In August 2013, Appellant pled guilty to the possession of a controlled substance of less than one gram—methamphetamine, and was placed on deferred adjudication community supervision for two years. See Tex. Health & Safety Code Ann. §§ 481.102(6) (providing methamphetamine is a Penalty Group 1 substance), .115 (providing possession of a Penalty Group 1 substance is a state jail felony if the amount possessed, including adulterants or dilutants, weighs less than a gram) (West 2010). In December of that same year, the State filed a petition to proceed to adjudication based on Appellant’s alleged violation of the terms and conditions of her deferred adjudication community supervision.

On July 13, 2015, Appellant signed a document entitled “Written Plea Admonishments on Motion to Revoke Community Supervision or Petition to Proceed to Adjudication,” which also contained a judicial confession and waivers, including a waiver of all rights of appeal and of the attendance and record of a court reporter. The document purported to contain a “punishment agreement” of “open plea—true but” but did not reflect anything given up by the State or any punishment terms. In the judicial confession, which Appellant also signed, she pled true to the allegations in the State’s petition. Based on Appellant’s pleas of true to the allegations in the State’s petition, the trial court adjudicated her guilt on July 13, 2015.

A week later, the trial court sentenced Appellant to serve one year’s confinement in the state jail division and to pay \$1,622 in reparations. There is

no reporter's record of the sentencing hearing.

The trial court's certification of appeal, dated the same date that the sentencing hearing was held, provides that Appellant waived the right of appeal. Appellant initialed the line indicating that she had waived the right of appeal on the certificate and also signed at the bottom of the document below these statements:

I have been admonished that my attorney must mail a copy of the court of appeals' judgment and opinion to my last known address and that I have only 30 days in which to file a pro se petition for discretionary review in the court of appeals I acknowledge that, if I wish to appeal this case and if I am entitled to do so, it is my duty to inform my appellate attorney, by written communication[,] of any change in the address at which I am currently living or any change in my current prison unit. I understand that, because of appellate deadlines, if I fail to timely inform my appellate attorney of any change in my address, I may lose the opportunity to file a pro se petition for discretionary review.

Appellant's appointed trial counsel also signed the certification of appeal.

Procedural History in This Court

Appellant timely appealed. Her brief was due August 22, 2016. Because we did not receive her brief, on September 7, 2016, we sent a late brief notice to her counsel of record,² copying the State and the trial judge, providing that the

²See Tex. R. App. P. 6.3(b) (stating that notices must be sent to a party's lead counsel in the trial court if that party was represented by counsel in the trial court, lead counsel on appeal has not yet been designated for that party, and lead counsel in the trial court has not filed a nonrepresentation notice or been allowed to withdraw), 6.4(b) (stating that appointed counsel in a criminal case cannot file a notice of nonrepresentation).

appeal would be abated and the case would be remanded to the trial court absent a timely response. No one responded. On September 27, 2016, we therefore abated the case to the trial court to determine, among other things, whether Appellant desired to prosecute her appeal, why appointed counsel had not filed a brief, and whether counsel (from whom we had received no correspondence) had abandoned the appeal.

On October 24, 2016, after we had received and reviewed the abatement record, we sent a letter to Appellant stating,

The reporter's record from the hearing reflects that the trial court sent notice of the hearing to you at your last known address, but you did not attend. The record contains the trial court's finding that, because you were not present at the hearing, the trial court had no way of ascertaining whether you wished to continue your appeal. The record also contains the trial court's finding that counsel should not be appointed to represent you on appeal.

We warned Appellant that if she did not inform this court by November 3, 2016 of her desire to file a brief, we could decide her appeal without a brief. See Tex. R. App. P. 38.8(b)(4). We received no response. Accordingly, on December 2, 2016, this court ordered that this appeal would be submitted without briefs. The court's internal records show that that order—but not our October 24, 2016 letter mailed to Appellant—was returned to the court from the post office marked “Return to Sender,” “Attempted—Not Known,” and “Unable to Forward.”

Discussion

When an appellant in a criminal case fails to file a brief but there is no indication that she has engaged in bad-faith abuse of the judicial process, we

review the record for fundamental error. See *Lott v. State*, 874 S.W.2d 687, 688 (Tex. Crim. App. 1994); *Baker v. State*, No. 02-14-00157-CR, 2015 WL 392640, at *2 (Tex. App.—Fort Worth Jan. 29, 2015, no pet.) (mem. op. on reh'g, not designated for publication). The Texas Court of Criminal Appeals has listed the following fundamental errors: (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. *Saldano v. State*, 70 S.W.3d 873, 887–89 (Tex. Crim. App. 2002); *Baker*, 2015 WL 392640, at *2. Our review of the record yields no fundamental error.

Conclusion

Because our review of the record reveals no fundamental error, we affirm the trial court's judgment.

PER CURIAM

PANEL: PITTMAN, WALKER, and MEIER, JJ.

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

DELIVERED: June 1, 2017