



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

NO. 02-17-00359-CR

DAVID MIDDLEMAN

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 431ST DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. F16-2710-431

MEMORANDUM OPINION¹

After receiving Appellant’s Counsel’s “Motion to Withdraw as Counsel for Appellant,” we abated this appeal and remanded this case to the trial court for a hearing to determine whether Appellant wished to continue this appeal. Two days before the hearing, Appellant’s counsel filed with this court a motion to dismiss Appellant’s appeal, but the motion did not comply with rule 42.2(a)

¹See Tex. R. App. P. 47.4.

because it included limitations beside Appellant's signature.² See Tex. R. App. P. 42.2(a). Two days later at the abatement hearing, the trial court noted that it had received Appellant's handwritten motion to withdraw his appeal.³ The trial court confirmed that Appellant no longer wishes to pursue this appeal.

Rule 42.2(a) of the Texas Rules of Appellate Procedure provides that an appeal may be dismissed if an appellant files a motion to dismiss the appeal signed by both the appellant and his attorney. See *id.* The purpose of that requirement is to protect an appellant from having his appeal dismissed by counsel without his consent and to ensure that counsel had notice of the motion in order to advise the client on the consequences of a dismissal. *Conners v. State*, 966 S.W.2d 108, 110 (Tex. App.—Houston [1st Dist.] 1998, pet. ref'd); see *Jones v. State*, No. 07-15-00371-CR, 2016 WL 902960, at *1 (Tex. App.—Amarillo Mar. 7, 2016, no pet.) (mem. op., not designated for publication). Moreover, the decision of whether to take an appeal from a criminal conviction is personal to the accused. See *Conners*, 966 S.W.2d at 110 (citing *Jones v. Barnes*, 463 U.S. 745, 751, 103 S. Ct. 3308, 3312 (1983)).

Based on the record before us, and no decision of this court having been delivered, we dismiss this appeal at Appellant's request and dismiss counsel's

²After Appellant's signature, the following appears: "without recourse all rights reserved."

³Appellant's handwritten motion to withdraw his appeal appears in the supplemental clerk's record that was filed in this court after the abatement hearing.

motion to withdraw as moot. See Tex. R. App. P. 43.2(f); *Jones*, 2016 WL 902960, at *1; see also *Terry v. State*, No. 03-14-00555-CR, 2016 WL 4506154, at *1 (Tex. App.—Austin Aug. 25, 2016, no pet.) (mem. op., not designated for publication) (dismissing appeal at appellant’s request and dismissing counsel’s motion to withdraw as moot).

/s/ Sue Walker
SUE WALKER
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

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

DELIVERED: June 21, 2018