



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-18-00121-CR

TIMOTHY DEAN MCALISTER, Appellant

V.

THE STATE OF TEXAS

On Appeal from County Criminal Court No. 2
Tarrant County, Texas
Trial Court No. 1488130

Before Sudderth, C.J.; Pittman and Birdwell, JJ.
Memorandum Opinion by Justice Birdwell

MEMORANDUM OPINION

Appellant Timothy Dean McAlister appeals his conviction and his 180-day suspended sentence for driving while intoxicated while having an open container of alcohol.¹ After McAlister filed his notice of appeal with assistance of retained counsel, his counsel withdrew. Although McAlister requested appointed counsel, the trial court found that he was not indigent and denied that request. McAlister proceeded pro se. We received a clerk's record, but we did not receive a reporter's record because McAlister did not pay for it.

On June 29, 2018, we sent a letter to McAlister to inform him that his brief would be due on August 13, 2018. McAlister did not file a brief. On September 11, 2018, we issued an order stating that McAlister had not filed his brief and informing him that we could consider his appeal without briefs unless before September 21, 2018, he filed a motion reasonably explaining his failure to file a brief. McAlister never filed such a motion.

The trial court has held a hearing in which the court determined that McAlister desires to prosecute his appeal and that he is not indigent. *See* Tex. R. App. P. 38.8(b)(2), (3). McAlister has not made necessary arrangements for filing a brief. *See* Tex. R. App. P. 38.8(b)(4). Accordingly, we will consider this appeal without briefs. *See id.*

¹*See* Tex. Penal Code Ann. § 49.04(a), (c) (West Supp. 2018). The trial court suspended the imposition of the sentence and placed McAlister on community supervision.

We have reviewed the clerk's record and have not discerned any unassigned fundamental error. We therefore affirm the trial court's judgment. *See id.*; *Lott v. State*, 874 S.W.2d 687, 688 (Tex. Crim. App. 1994); *Nichols v. State*, No. 02-16-00150-CR, 2017 WL 4974774, at *2 (Tex. App.—Fort Worth Nov. 2, 2017, no pet.) (mem. op., not designated for publication).

/s/ Wade Birdwell

Wade Birdwell
Justice

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Tex. R. App. P. 47.2(b)

Delivered: January 10, 2019