

NO. 07-01-0066-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
MAY 17, 2002

CARLOS MATA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE 64TH DISTRICT COURT OF HALE COUNTY;
NO. A13917-0012; HONORABLE JACK R. MILLER, JUDGE

ON PRO SE MOTION FOR EXTENSION OF TIME TO FILE
MOTION FOR REHEARING AND COUNSEL'S MOTION TO WITHDRAW

Before QUINN, REAVIS and JOHNSON, JJ.

By our opinion of January 18, 2002, we affirmed the judgment of the trial court.
Pending before this Court is appellant's *pro se* motion seeking (1) a hearing on his status

as an indigent, and (2) a second extension of time in which to file his motion for rehearing. Also, appointed counsel has filed a motion to withdraw asserting, among other things, that appellant has instructed him to file a petition for discretionary review to the Court of Criminal Appeals. We will first address appellant's requests and then consider counsel's motion to withdraw.

Appellant's Motion

Appellant's status as an indigent has already been established in the trial court. Thus, his motion for a hearing on that status is moot. See Tex. Code Crim. Proc. Ann. art. 26.04(p) (Vernon Pamph. Supp. 2002). Further, pursuant to Rule 49.8 of the Texas Rules of Appellate Procedure, this Court's authority to rule on a motion for extension of time for filing a motion for rehearing is discretionary. Accordingly, appellant's request for a second extension of time in which to file a motion for rehearing is overruled.

Counsel's Motion to Withdraw

In *Ayala v. State*, 633 S.W.2d 526, 527-28 (Tex.Cr.App. 1982), the Court held that the Fourteenth Amendment and former articles 26.04 and 26.05 of the Texas Code of Criminal Procedure did not impose any duty on the State to provide counsel to an indigent seeking discretionary review to the Court of Criminal Appeals. Also, where appointed counsel was of the opinion that there were no grounds for review, the Court concluded that appellant was not automatically entitled to assistance of court-appointed counsel to file a

petition for discretionary review. *Id.* Further, the current version of article 26.04(j)(2) providing that appointed counsel shall represent the defendant until “charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties . . .” is substantially similar to the former provisions for purpose of exhaustion of appeals.

Appellant does not have a right to discretionary review of the decision of this Court by the Court of Criminal Appeals, instead review is at the discretion of the Court. Tex. R. App. P. 66.2. Further, appellant does not have a constitutional right to counsel for pursuing discretionary review, even though he has a right to prepare and file a pro se petition for review. *Ex Parte Fontenot*, 3 S.W.3d 32, 34 (Tex.Cr.App. 1999); *Ex Parte Wilson*, 956 S.W.2d 25, 26 (Tex.Cr.App. 1997). Thus, the order of the trial court appointing counsel does not require him to present a petition for discretionary review and counsel is of the opinion that no grounds for filing a petition for discretionary review exist. The appeal has been exhausted, therefore counsel’s motion to withdraw is granted.

IT IS SO ORDERED.

Don H. Reavis
Justice

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