

NO. 07-03-0263-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
OCTOBER 22, 2003

HERBERT FEIST, APPELLANT

V.

DIRECTORS OF THE TEXAS DEPT. OF CRIMINAL
JUSTICE, INSTITUTIONAL DIVISION, AND THE FIFTH
CIRCUIT COURT OF APPEALS, APPELLEES

FROM THE 108TH DISTRICT COURT OF POTTER COUNTY;

NO. 90,388-E; HONORABLE ABE LOPEZ, JUDGE

Before JOHNSON, C.J., and QUINN and CAMPBELL, JJ.

MEMORANDUM OPINION

Herbert Feist, appellant, an inmate proceeding *pro se*, appeals the trial court's order dismissing his case for failure to comply with Chapter 14 of the Texas Civil Practices and Remedies Code. We dismiss the appeal.

The trial court clerk's record was filed with this court on August 15, 2003; by letter dated August 18, this court's clerk gave notice to appellant of the filing of the trial court clerk's record. Pursuant to Tex. R. App. Proc. 38.6(a), appellant's brief was due September 15, 2003. By letter dated September 29, 2003, we notified appellant that the due date for the brief had passed, that the brief had not been filed and no motion for extension of time to file had been received by the court. Citing Tex. R. App. Proc. 38.8, the letter also notified appellant that the appeal would be subject to dismissal unless a response reasonably explaining his failure to file a brief, together with a showing that the appellee has not been significantly injured by the failure, was submitted by October 13, 2003.

Both this court's August 18 and September 29 letters have been returned to the court, with the notation "Refused." By telephone conference with the Texas Department of Criminal Justice facility in which appellant is confined, this court's clerk has confirmed that appellant twice refused to accept delivery of either letter. We find that this court's notice to appellant in our August 18 and September 29 letters was effective even though refused. See *Barnes v. Frost Nat'l Bank*, 840 S.W. 2d 747 (Tex.App.—San Antonio 1992, no writ). Appellant has not filed a response to the court's September 29 letter, nor has he since submitted a brief or a motion for extension of time.

Accordingly, having given all parties more than the required ten days' notice, we dismiss the appeal for want of prosecution. Tex. R. App. Proc. 38.8(a)(1); 42.3(b).

James T. Campbell

Justice