

NO. 07-03-0320-CR  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL C  
NOVEMBER 24, 2003

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JOHN FOLMER,

Appellant

v.

THE STATE OF TEXAS,

Appellee

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FROM THE 106TH DISTRICT COURT OF LYNN COUNTY;  
NO. 02-2605; HON. CARTER T. SCHILDKNECHT, PRESIDING

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***Order of Dismissal***

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

Pending before the court is the appeal of John Folmer (appellant). We abated the matter to the trial court on September 19, 2003, because the court reporter represented that appellant had failed to pay, or make arrangements to pay for, the record. At the hearing convened by the trial court per our directive, appellant informed it that he no longer cared to prosecute his appeal. This representation then was memorialized by the trial court in findings of fact and conclusions of law filed with us on November 24, 2003.

Although we have no formal motion to dismiss before us as required by Texas Rule of Appellate Procedure 42.2(a), Rule 2 of the same rules permits us to suspend the operation of an existing rule. TEX. R. APP. P. 2; see *Rodriguez v. State*, 970 S.W.2d 133, 135 (Tex. App.--Amarillo 1998, pet. ref'd). Therefore, pursuant to Rule 2, and because appellant has clearly revealed his desire to forego appeal, we suspend Rule 42.2(a) and dismiss the appeal based upon appellant's representation to the trial court.

Having so dismissed the appeal, no motion for rehearing will be entertained, and our mandate will issue forthwith.

Brian Quinn  
Justice

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