

NO. 07-04-0242-CR  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL A  
SEPTEMBER 24, 2004

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JACOB MORGAN MCCALLISTER, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

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FROM THE COUNTY COURT OF HALE COUNTY;  
NO. 2003C-569; HONORABLE BILL HOLLARS, JUDGE

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

**MEMORANDUM OPINION**

Jacob Morgan McCallister brought this appeal from his conviction for possession of marijuana. Based on a finding by the trial court that appellant no longer wishes to prosecute the appeal, we will dismiss.

The factual and procedural history of the case is set out in our August 19, 2004 order in this appeal and need not be repeated here. See *McCallister v. State*, No. 07-04-

0242-CR (Tex.App.–Amarillo August 19, 2004). That order abated the appeal for a hearing in accordance with Rule of Appellate Procedure 38.8(b) to determine whether appellant desires to prosecute the appeal and whether he is indigent and entitled to appointed counsel. *McCallister*, at 3. In conformity with our August 19, 2004 order the trial court gave notice of a hearing and conducted a hearing September 7, 2004. A supplemental record from that hearing has been filed in this court. It shows the hearing notice was sent by certified mail, delivered August 28, 2004. Appellant did not appear at the hearing. Based on his failure to appear the trial court found appellant does not wish to proceed with this appeal.

In accordance with the factual finding by the trial court, without addressing the merits, we dismiss this appeal. Tex. R. App. P. 38.8(b)(4), 43.2(f).

Per Curiam

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