

NO. 07-06-0474-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL D
JANUARY 23, 2009

MARIO ARAIZA, APPELLANT

v.

THE STATE OF TEXAS, APPELLEE

FROM THE 140TH DISTRICT COURT OF LUBBOCK COUNTY;
NO. 2005-410799; HON. JIM BOB DARNELL, PRESIDING

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

ORDER ON MOTION FOR IMPOSITION OF SANCTIONS

Appellant Mario Araiza appealed from his jury conviction for the offense of delivery of a controlled substance, enhanced, and the resulting sentence of life imprisonment. In an opinion issued on December 19, 2008, we affirmed the judgment of the trial court. *Araiza v. State*, No. 07-06-0474-CR, 2008 WL 5265191 (Tex.App.–Amarillo Dec. 19, 2008, no pet. h.) (mem. op., not designated for publication). On January 5, 2009, appellant, appearing *pro se*, filed a motion for rehearing as well as a document in which he asks that

we impose sanctions on his appointed appellate counsel, and that we refer the matter of counsel's handling of the appeal to the Office of Chief Disciplinary Counsel, State Bar of Texas, for further investigation.

We initially note that appellant's motion is filed while he still is represented by counsel, and thus runs afoul of the prohibition of hybrid representation. See, e.g., *Martinez v. State*, 163 S.W.3d 88, 90-91 (Tex.App.–Amarillo 2004, order), disp. on merits, 163 S.W.3d 92 (Tex.App.–Amarillo 2005, no pet.); *Stelbacky v. State*, 22 S.W.3d 583, 586 (Tex.App.–Amarillo 2000, no pet.) (both noting there is no right to hybrid representation). Because of the nature of the motion, however, we have considered its merits.

In addition to the authority to sanction granted by statute and rule, see, e.g., Tex. Gov't Code Ann. § 82.061 (Vernon 2005); Tex. R. App. P. 45; this Court has the inherent power to discipline misconduct by an attorney when reasonably necessary and to the extent we deem appropriate. *Johnson v. Johnson*, 948 S.W.2d 865, 840 (Tex.App.–San Antonio 1997, writ denied). See also *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 732 (Tex. 1997) (order on reh'g) (noting Chapter 10 of the Civil Practice and Remedies Code applies to motions and other documents filed before an appellate court). Appellant's *pro se* motion, however, complains of the issues counsel raised in the brief filed on appellant's behalf, and contends counsel instead should have raised an issue appellant believes was meritorious. We find appellant's complaint, involving disagreement over matters of professional judgment, is not properly the subject of a request for sanctions against his counsel, nor for referral to the State Bar's Chief Disciplinary Counsel. See

Johnson, 948 S.W.2d at 840-41; *Kutch v. Del Mar College*, 831 S.W.2d 506, 510-12 (Tex.App.–Corpus Christi 1992, no writ) (both discussing proper use of court’s inherent sanction authority). Appellant’s motion is denied.

Per Curiam

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