

NO. 07-08-0200-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
JULY 7, 2008

BARRY PARTAIN,

Appellant

v.

THE STATE OF TEXAS,

Appellee

FROM THE 286th DISTRICT COURT OF HOCKLEY COUNTY;
NO. 08026594; HON. HAROLD PHELAN, PRESIDING

Memorandum Opinion

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

Appellant appeals from his conviction for possession of attempted aggravated assault causing serious bodily injury. Because the court reporter had not filed a record, we abated and remanded the cause to the 286th District Court of Hockley County (trial court). The latter convened a hearing attended by appellant. At the proceeding, appellant informed the trial court that he no longer cared to prosecute the appeal. The trial court found this decision to be knowing and voluntary. Furthermore, it along with appellant's representations were memorialized in a supplemental clerk's record filed with this court.

Although we have no 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
Chief Justice

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