

NO. 07-10-00120-CV; 07-10-00121-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
MARCH 9, 2011

HARVEY FLOYD HODO, APPELLANT

v.

THE STATE OF TEXAS, APPELLEE

FROM THE 47TH DISTRICT COURT OF RANDALL COUNTY;
NO. 18700-A, 18765-A; HONORABLE RICHARD DAMBOLD, JUDGE

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

MEMORANDUM OPINION

Appellant, Harvey Floyd Hodo, an inmate proceeding *pro se*, perfected appeal from two trial court orders, dated March 23, 2010, in each referenced cause, which, pursuant to section 501.014(e) of the Texas Government Code, authorized the Texas Department of Criminal Justice, Institutional Division, to withhold from Hodo's inmate trust account the following amounts to pay for costs associated with his criminal convictions: (1) \$1,586.50 in cause number 18700-A; and (2) \$486.50 in cause number 18765-A. Hodo filed *pro se* notices of appeal on April 6, 2010, challenging the withdrawal orders. On June 17, 2010, this Court abated the appeals for 180 days to

allow Hodo time to take such action as is necessary to (1) obtain the necessary documentation of the underlying court orders; (2) compare the underlying court order to the withdrawal orders; (3) file appropriate motions to modify, correct, or rescind the withdrawal orders; (4) present those motions to the trial court; (5) schedule any necessary hearing; and (6) obtain from the trial court final appealable orders addressing those motions. See TEX. R. APP. P. 27.2; see also Iacono v. Lyons, 6 S.W.3d 715 (Tex.App.--Houston [1st Dist.] 1999, no pet.) (finding appeal prematurely filed and abating and remanding to permit the jurisdictional defect to be cured).

On January 10, 2011, this Court received a supplemental clerk's record in these appeals that includes a November 12, 2010 Order on Defendant's Motion to Rescind the Withdrawal Notification Orders, which modified the March 23, 2010 withdrawal orders to omit the assessment of attorney's fees and "Juvenile Crime and Delinq. Fee." As a result of these modifications, the trial court recalculated the costs associated with Hodo's criminal convictions to be \$1,286.00 in cause number 18700-A; and \$286.00 in cause number 18765-A. The trial court further entered Amended Orders to Withdraw Funds reflecting the modifications.

These appeals were reinstated on January 10, 2011. On January 11, 2011, Hodo was notified that, by order of this Court, his appellate brief was due to be filed on or before February 10, 2011. Hodo did not file his brief nor request an extension of time to file his brief by this date. Consequently, by letter dated February 18, 2011, the Clerk of this Court notified Hodo that his brief was past due and that failure to file his brief with this Court on or before February 28, 2011, could result in dismissal of his appeal

pursuant to Rule 38.8(a) of the Texas Rules of Appellate Procedure. Hodo has neither filed his brief nor responded to this Court's February 18, 2011 correspondence.

Accordingly, we now dismiss this appeal for want of prosecution and failure to comply with a notice from the Clerk of this Court requiring a response or other action in a specified time. See TEX. R. APP. P. 38.8(a)(1), 42.3(b), (c).

Mackey K. Hancock
Justice