



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-13-00006-CR

DAVID HERNANDEZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 46th District Court
Wilbarger County, Texas
Trial Court No. 10,179, Honorable Stuart Messer, Presiding

June 11, 2013

ORDER ON ABATEMENT AND REMAND

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

Appellant David Hernandez filed a notice of appeal from a judgment revoking his community supervision on January 13, 2013. The record was filed on April 4. The deadline for filing appellant's brief was May 6, but the brief was not filed nor did appellant request an extension of time for filing his brief.

By letter of May 22, the Court notified appellant's counsel of the past due brief and that, when filed, it must be accompanied by a motion for extension of time. Appellant was directed to file the brief on or before June 3. The letter further notified

appellant that absent compliance the appeal would be abated and remanded to the trial court for further proceedings without further notice. We have received no response to our May 22 letter.

Accordingly, we now abate this appeal and remand the cause to the trial court for further proceedings. On remand, we direct the trial court to determine:

- (1) whether appellant still desires to prosecute this appeal;
- (2) if appellant desires to prosecute the appeal, whether appellant remains indigent;
- (3) whether appellant has been denied effective assistance of counsel due to counsel's failure to timely file an appellate brief.

Should the trial court determine that appellant wishes to continue the appeal and is entitled to new appointed counsel, the name, address, telephone number, and state bar number of the newly-appointed counsel shall be provided to the clerk of this Court.

The trial court shall execute findings of fact and conclusions of law, and shall cause its findings, conclusions, and any necessary orders to be included in a supplemental clerk's record to be filed with the clerk of this Court by July 10, 2013.

If new counsel is appointed, appellant's brief shall be filed within thirty days of the date of appointment. However, should the trial court permit appellant's present counsel to remain in that capacity, counsel shall file appellant's brief within seven days of the date the supplemental record required by this order is filed with the clerk of this Court.

It is so ordered.

Per Curiam

Do not publish.