



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

No. 07-13-00422-CR

GABRIEL LUNA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 137th District Court
Lubbock County, Texas
Trial Court No. 2011-432,524, Honorable John J. "Trey" McClendon, Presiding

May 21, 2014

ON ABATEMENT AND REMAND

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

Appellant, Gabriel Luna, appeals from a judgment of conviction for the offense of sexual assault of a child,¹ and sentence of fifty years' incarceration in the Institutional Division of the Texas Department of Criminal Justice.² Appellant filed notice of appeal on November 27, 2013. The Clerk's Record was filed on January 6, 2014.

¹ See TEX. PENAL CODE ANN. § 22.011(a)(2)(A) (West 2011).

² While appellant was convicted of a second-degree felony, see *id.* § 22.011(f), he was punished for a first-degree felony because he was found to have been previously finally convicted of a felony, see *id.* § 12.42(b) (West Supp. 2013).

This Court has granted four requests for extension of time to file the reporter's record in this cause. Each of these requests have been premised on the reporter's case load. The last such extension extended the deadline for filing the reporter's record to May 5, 2014. On May 6, 2014, this Court received a fifth request for extension of time to file the reporter's record. This fifth request is hereby denied.

In order to ensure that the reporter's record in this cause is filed as soon as is practicable, we now abate this appeal and remand it to the trial court for further proceedings. See TEX. R. APP. P. 35.3(c). Upon remand, the trial court shall determine whether an alternate or substitute reporter should be appointed to complete the record in a timely manner.

If it is necessary to hold a hearing to determine this issue, the trial court shall immediately cause notice of the hearing to be given and shall conduct the hearing as soon as practicable. If a hearing is held, the trial court shall cause the hearing to be transcribed. In addition, the trial court shall (1) execute findings of fact and conclusions of law addressing the foregoing issue, (2) cause a supplemental clerk's record to be developed containing its findings of fact and conclusions of law, and any orders it may issue relating to this matter, and (3) if a hearing is held, cause a reporter's record to be developed transcribing any evidence and arguments presented at the hearing. The trial court shall then file the supplemental clerk's record and any supplemental reporter's record with the clerk of this court on or before June 20, 2014. Should further time be needed by the trial court to perform these tasks, same must be requested before June 20, 2014.

It is so ordered.

Per Curiam