



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

No. 07-15-00009-CR

TONY HARRELL-MACNEIL, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

**On Appeal from County Court at Law No. 1
McLennan County, Texas
Trial Court No. 20134973CR1; Honorable Mike Freeman, Presiding**

April 20, 2015

ABATEMENT AND REMAND

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

In exchange for a plea of guilty, Appellant, Tony Harrell-MacNeil, was convicted of misdemeanor driving while intoxicated and he was sentenced to 365 days confinement and a \$4,000 fine.¹ Punishment was suspended for twenty-four months. Both the clerk's record and reporter's record have been filed. Appellant's brief was due to be filed on March 30, 2015, but has yet to be filed. By letter dated April 6, 2015, this

¹ TEX. PENAL CODE ANN. § 49.04(d) (West Supp. 2014).

Court advised retained counsel, Mr. Walter M. Reaves, Jr., that the brief remained outstanding and he was granted until April 16, 2015, in which to file the brief accompanied by a motion for extension of time due to its untimeliness. The letter also noted that failure to comply would result in this appeal being abated and the cause being remanded to the trial court for further proceedings without further notice.

In response, counsel filed a motion for extension of time to file Appellant's brief; however, said motion was not accompanied by a brief as requested.² As grounds for the motion, counsel cites "several other matters" and preparation of a post-application for writ of *habeas corpus*. Generally, the normal press of business is not considered good cause. *Curry v. Clayton*, 715 S.W.2d 77, 79 (Tex. App.—Dallas 1986, no writ). Accordingly, that motion is denied.

Because counsel has not complied with our request of April 6, we now abate this appeal and remand the cause to the trial court for further proceedings. Upon remand, the trial court shall immediately determine why counsel has failed to file Appellant's brief and take such action as is necessary to ensure that the brief is filed in accordance with this opinion.

Should counsel file Appellant's brief on or before May 11, 2015, he is directed to immediately notify the trial court, in writing, of the filing, whereupon the trial court shall not be required to take further action. If, however, the brief is not filed by that date, pursuant to Rule 38.8(b)(2) and (3) of the Texas Rules of Appellate Procedure, the trial

² Counsel requested until May 16, 2015, to file Appellant's brief. May 16, 2015, falls on a Saturday.

court is directed to conduct a hearing on or before June 1, 2015, to determine the following:

1. whether Appellant still desires to prosecute the appeal;
2. whether retained counsel has abandoned the appeal entitling Appellant to new counsel; and
3. whether Appellant is indigent and entitled to the appointment of counsel.

See *Guillory v. State*, 557 S.W.2d 118, 121 (Tex. Crim. App. 1977).³

Should it be determined that Appellant does want to continue the appeal and the trial court determines he is indigent and entitled to appointed counsel, the name, address, telephone number, and State Bar of Texas identification number of new 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 June 15, 2015. New counsel, if any, shall file Appellant's brief thirty days after the date of engagement or appointment; however, should Mr. Reaves be allowed to remain as counsel, he is hereby ordered to file Appellant's brief instanter.

It is so ordered.

Per Curiam

Do not publish.

³ The trial court has a duty under the Texas and federal Constitutions to provide an indigent defendant with the effective assistance of counsel on appeal. *Guillory*, 557 S.W.2d at 120 (citing *Douglas v. California*, 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed.2d 811 (1963)). Effective assistance cannot be afforded without requiring that counsel file a brief on an appellant's behalf. *Guillory*, 557 S.W.2d at 121. The trial judge has the authority to require appointed counsel to file a brief on behalf of an appellant. *Id.*