



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

No. 07-16-00013-CV

IN THE MATTER OF DJ., A JUVENILE

On Appeal from the Juvenile Court
Bell County, Texas
Trial Court No. 76,558; Honorable Rebecca Depew, Presiding

February 11, 2016

MEMORANDUM OPINION

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

Appellant, D.J., perfected an appeal from the trial court's *Order of Release to the Institutional Division of the Texas Department of Criminal Justice*. The order was signed on November 25, 2015, and the notice of appeal was filed in the Third Court of Appeals on December 7, 2015. On that date, the clerk of the Third Court of Appeals advised Appellant's counsel that a filing fee of \$205 was owed on or before December 17, 2015; however, it did not advise Appellant of the consequences for failure to comply with a directive of the court.

On January 7, 2016, this case was transferred to this court by the Texas Supreme Court pursuant to its docket equalization efforts. See TEX. GOV'T CODE ANN. § 73.001 (West 2013). Although the deadlines in which to file an affidavit of indigence had already lapsed,¹ in the interest of justice, by letter dated January 12, 2016, this court directed Appellant's counsel to either pay the required filing fee or in lieu thereof, file an affidavit of indigence no later than January 27, 2016. Counsel was also advised that, pursuant to Rule 42.3(c) of the Texas Rules of Appellate Procedure, failure to comply would result in dismissal of this appeal.

In response to this court's letter, on January 27, 2016, counsel filed a *Motion to Extend Time to File Appellant's Affidavit of Indigence*. By that motion, counsel requested an extension of time to February 5, 2016, explaining that he had mailed Appellant an affidavit of indigence for his signature on January 25, 2016, and expected it to be returned within ten days.

Rule 20.1(c)(3) of the Texas Rules of Appellate Procedure provides that an appeal may not be dismissed or affirmed for failing to file an affidavit of indigence without first providing an appellant notice of the deficiency and a reasonable time to remedy it. In this appeal, Appellant was first given notice of a deficiency on December 17, 2016, by the Third Court of Appeals. Following the transfer of the appeal to this court, Appellant was given a second notice of a deficiency and further advised of the opportunity to cure the deficiency by filing a new affidavit of indigence on or before

¹ See TEX. R. APP. P. 20.1(c)(3). The deadline for extending the time in which to file an affidavit of indigence may be extended if, within fifteen days after the deadline for filing the affidavit, the party files in the appellate court a motion complying with Rule 10.5(b) of the Texas Rules of Appellate Procedure. The deadline for filing the affidavit is with or before the notice of appeal. TEX. R. APP. P. 20.1(c)(1).

January 27, 2016. See *Higgins v. Randall County Sheriff's Office*, 193 S.W.3d 898, 899 (Tex. 2006).

Instead of filing an affidavit of indigence, counsel filed a motion for extension of time requesting until February 5, 2016, in which to file Appellant's affidavit. No determination of the motion having been made, the requested deadline extension has now lapsed. To date, a new affidavit of indigence has yet to be filed. Consequently, the motion for extension of time is rendered moot and the appeal is dismissed for failure to comply with a notice from the clerk requiring a response or other action within a specified time. TEX. R. APP. P. 42.3.

Per Curiam