



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

No. 07-16-00169-CR

EX PARTE ADOUN PHOMMIVONG

On Appeal from the 251st District Court
Potter County, Texas
Trial Court No. 64,888-C, Honorable Ana Estevez, Presiding

June 15, 2016

ABATEMENT AND REMAND

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

Appellant, Adoun Phommivong, appeals the denial of a writ of habeas corpus filed under Article 11.072 of the Texas Code of Criminal Procedure.

The appellate record was due on April 25, 2016. The court reporter's record has been filed. However, on April 25, the trial court clerk requested an extension of time to file the record and notified us that appellant had not paid or made acceptable payment arrangements for the clerk's record. See TEX. R. APP. P. 35.3(a)(2).

By letter dated April 28, 2016, we granted an extension to May 25 to file the clerk's record. We also directed appellant to make acceptable payment arrangements

for the clerk's record, or comply with the requirements of Rule 20.2 if appellant was unable to pay for the record, by May 13. See TEX. R. APP. P. 20.2, 35.3(a)(2). Failure to do so, we advised, could result in the appeal being abated and the cause remanded to the trial court for further proceedings without further notice. See TEX. R. APP. P. 37.3(a)(2). On May 10, 2016, appellant filed a certificate of compliance indicating that he had made a prima facie showing of indigency, citing his "Written Designation Specifying Matters For Inclusion In Clerk's Record" filed in the trial court, and was therefore entitled to a free record on appeal. On May 27, 2016, the trial court clerk filed a second request for an extension on the grounds that appellant had not made acceptable payment arrangements for the clerk's record. We received no further communication from appellant's counsel.

Accordingly, we now abate this appeal and remand the cause to the trial court for further proceedings. TEX. R. APP. P. 37.3(a)(2). Upon remand, the trial court is directed to immediately cause notice to be given of and to conduct a hearing to determine: (1) whether appellant desires to prosecute this appeal; (2) if appellant desires to prosecute this appeal, whether appellant is entitled to have the clerk's record furnished without charge; (3) if appellant is not entitled to have the clerk's record furnished without charge, the date appellant will make acceptable payment arrangements for the clerk's record; and (4) what orders, if any, should be entered to assure the filing of appropriate notices and documentation to dismiss appellant's appeal if appellant does not desire to prosecute this appeal or, if appellant desires to prosecute this appeal, to assure that the clerk's record will be filed promptly and the appeal will be diligently pursued.

The trial court is directed to: (1) conduct any necessary hearings; (2) make and file findings of fact, conclusions of law, and recommendations addressing the determinations identified above and cause them to be included in a supplemental clerk's record; (3) cause the hearing proceedings to be transcribed and included in a supplemental reporter's record; (4) have a record of the proceedings made to the extent any of the proceedings are not included in the supplemental clerk's record or the supplemental reporter's record; and (5) cause the records of the proceedings to be filed with this Court. In the absence of a request for extension of time from the trial court, the supplemental clerk's record, supplemental reporter's record, and any additional proceeding records, including any orders, findings, conclusions, and recommendations, are to be filed with the Clerk of this Court not later than July 14, 2016.

Per Curiam

Do not publish.