



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

No. 07-16-00222-CR
No. 07-16-00223-CR

TRAFTON RODGERS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 140th District Court
Lubbock County, Texas
Trial Court No. 2016-409,230 (Counts I & II); Honorable Jim Bob Darnell, Presiding

March 10, 2017

**ORDER GRANTING MOTION TO WITHDRAW AND
ORDER OF ABATEMENT AND REMAND**

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

Pending before this court are two motions, one filed in each cause, entitled *Charles Blevins' Motion for Leave to Withdraw as Counsel for Appellant Trafton Rodgers*. We grant the motions to withdraw; and, we abate and remand for a hearing to determine the status of Appellant's representation.

Appellant, Trafton Rodgers, was convicted of two counts of aggravated assault by threat with a deadly weapon.¹ The trial court sentenced him to ten years confinement for each count, suspended in favor of community supervision for a term of ten years. At the trial court level, Appellant was originally represented by court-appointed counsel, Aaron Carter. Mr. Carter withdrew when Appellant retained Kristopher Espino. Mr. Espino withdrew and Appellant was represented at trial by retained counsel, Heath Harris. Following his conviction, newly retained appellate counsel, Charles Blevins, filed Appellant's notice of appeal.

The appellate record was filed and Appellant's brief became due on October 17, 2016. Subsequent to that date, based upon an allegation of medical issues affecting Appellant's appellate counsel, this court has granted five separate extensions. After the last extension, Appellant's brief was due on January 30, 2017. To date, no brief has been filed and no further motion for extension of time to file Appellant's brief has been received.

Instead, subsequent to the last briefing deadline, Appellant's counsel filed the aforementioned motions to withdraw from representation. In his motions, counsel asserts he "has made a professional and conscientious examination and evaluation of the record in this case and has determined that this appeal lacks any basis in law or in

¹ TEX. PENAL CODE ANN. § 22.02(a)(2) (West 2011).

fact and is thus wholly frivolous.”² Based on the facts and circumstances surrounding the motions to withdraw, we grant those motions.³

Having granted counsel’s motions to withdraw, we are mindful that Appellant has still failed to file a brief, despite being notified that failure to do so could result in the appeal being abated and the causes remanded to the trial court for further proceedings without notice. See TEX. R. APP. P. 38.8 (b)(2), (3). Rule 38.8(b) provides, in part, that in a criminal case an appellant’s failure to file a brief does not authorize either dismissal of the appeal or consideration of the appeal without briefs, unless the trial court has found either (1) that the appellant no longer desires to prosecute the appeal or (2) that the appellant is not indigent but has not made the necessary arrangements for filing a brief. See TEX. R. APP. P. 38.8(b)(1), (4). Therefore, we abate this matter and remand the causes to the trial court for further proceedings pursuant to Rule 38.8(b).

On remand, the trial court shall utilize whatever means it finds necessary to determine the following:

1. whether Appellant desires to prosecute his appeal;
2. whether Appellant is indigent and entitled to the appointment of counsel;

² Generally, a motion to withdraw by retained counsel based on his professional evaluation that an appeal is frivolous does not trigger the procedures outlined in *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and its progeny. Counsel is, nevertheless, required to comply with the provisions of Rule 6.5 of the Texas Rules of Appellate Procedure.

³ Subsequent to filing his motions to withdraw, Mr. Blevins filed a *Motion to Abate Motion for Leave to Withdraw as Counsel for Appellant Trafton Rodgers*, wherein he alleges that he “needs to ensure he has complied with all rules of the Texas Rules of Appellate procedure [sic] for a non-appointed appeal (e.g. No Anders brief).” On February 15, 2017, Appellant filed an objection to counsel’s motions to withdraw. Because we find Mr. Blevins’ motions to withdraw should be granted due to a conflict created by his representation that “this appeal lacks any basis in law or in fact and is thus wholly frivolous,” his motions to abate and Appellant’s objection to the motions to withdraw are rendered moot.

3. if Appellant is not indigent, what arrangements for the retention of new appellate counsel and for the filing of a brief have been made; and
4. if Appellant desires to continue the appeal, and is represented by new appellate counsel, the date this court may expect Appellant's brief to be filed.

Should the trial court determine Appellant desires to prosecute this appeal and is indigent, it shall appoint appellate counsel. Should the trial court appoint counsel or if Appellant has retained new appellate counsel, the name, mailing address, e-mail address, telephone number, and state bar number of the newly-appointed or newly-retained counsel shall be provided to the clerk of this court in an order of the trial court.

Finally, the trial court shall execute findings of fact, conclusions of law, and any orders it finds necessary regarding the aforementioned issues and cause its findings, conclusions, and orders, if any, to be included in a supplemental clerk's record to be filed with the clerk of this court by April 21, 2017.

New appellate counsel, whether retained or appointed, shall file Appellant's brief within thirty days of the date of appointment or engagement.

It is so ordered.

Per Curiam

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