



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

No. 07-17-00059-CV

SAR 1 SEMI-AUTOMATIC ASSAULT RIFLE WITH MAGAZINE, ET AL., APPELLANTS

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 137th District Court
Lubbock County, Texas
Trial Court No. 2016-522,855; Honorable Les Hatch, Presiding

November 1, 2017

MEMORANDUM OPINION

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

Appellant, Joe Dray Rushing, appeals from a *Default Judgment* in favor of Appellee, the State of Texas. We dismissed his appeal on March 7, 2017, for failure to pay the filing fee,¹ but reinstated the appeal on May 3.² The appellate record was filed

¹ *SAR 1 Semi-Automatic Assault Rifle with Magazine v. State*, No. 07-17-00059-CV, 2017 Tex. App. LEXIS 1901 (Tex. App.—Amarillo Mar. 7, 2017, no pet.) (per curiam) (mem. op.).

² *SAR 1 Semi-Automatic Assault Rifle with Magazine v. State*, No. 07-17-00059-CV, 2017 Tex. App. LEXIS 4396 (Tex. App.—Amarillo May 3, 2017, order) (per curiam). Our order construed Rushing's appeal to be a restricted appeal and we ordered the filing of an amended notice of appeal to so reflect. Rushing never complied with that order.

and Rushing's brief was originally due on July 3. On July 21, Rushing filed a motion for extension explaining that his counsel was suffering from certain medical issues. Accordingly, we granted Rushing an extension of time to file his brief until September 18. On September 21, we granted Rushing a second extension until October 18 due to his counsel's continuing medical issues. However, in the letter to Rushing, the clerk notified him that failure to timely file a brief by this date would subject the appeal to dismissal without further notice. See TEX. R. APP. P. 38.8(a)(1), 42.3(b). On October 19, Rushing filed a third motion for extension seeking until October 25 to file his brief. The motion stated that his "counsel has been cleared to work and has finished the last treatment." Thus, we granted an extension until October 25. To date, however, Rushing has not filed a brief or any other motion for extension of time with this court.

Consequently, this appeal is dismissed for want of prosecution and failure to comply with a notice from the clerk of this court requiring action within a specified time. See TEX. R. APP. P. 38.8(a)(1); 42.3(b), (c).

Per Curiam