



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

No. 07-17-00197-CR

JEREMY LYNN FIGUEREDO, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 69th District Court
Hartley County, Texas
Trial Court No. 1232H; Honorable Richard Dambold, Presiding

June 28, 2017

ORDER OF ABATEMENT AND REMAND

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

Appellant, Jeremy Lynn Figueredo, was convicted of evading arrest¹ and sentenced to ten years imprisonment. He has filed a *pro se* notice of appeal requesting appointed appellate counsel. Accordingly, we abate the appeal and remand the cause for further proceedings.

¹ See TEX. PENAL CODE. ANN. § 38.04 (West 2016).

Appellant was sentenced on April 26, 2017. On May 9, he filed a *pro se* notice of appeal under trial court cause number 1256H, the cause number of his pending bail jumping charges.² In his notice, Appellant states he appeals his “conviction” and requests that the trial court appoint appellate counsel and set bail during his appeal. The trial court did not appoint appellate counsel and the notice of appeal was not forwarded to this court by the district clerk. On June 2, Appellant filed *Defendant’s Corrected Pro Se Notice of Appeal* under trial court cause number 1232H, explaining that he filed his original notice under the incorrect cause number. He again requested the appointment of counsel and bail.

The timely filing of a written notice of appeal is a jurisdictional prerequisite to hearing an appeal. *Castillo v. State*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2012). When, as here, a motion for new trial was not filed, the notice of appeal must be filed within thirty days after the day the appellant’s sentence was imposed. TEX. R. APP. P. 26.2(a)(1). Notice is sufficient if it shows the party’s desire to appeal from the judgment. *Id.* at 25.2(c)(2). An amended notice of appeal correcting a defect or omission in an earlier filed notice may be filed at any time before the appellant’s brief is filed. *Id.* at 25.2(f).

Here, Appellant filed a notice of appeal under the wrong cause number within thirty days of his sentencing. The Texas Court of Criminal Appeals has held that a notice of appeal mistakenly filed under the wrong cause number may invoke an appellate court’s jurisdiction if the notice sufficiently shows the appellant’s desire to appeal his conviction. *See Few v. State*, 230 S.W.3d 184, 185 (Tex. Crim. App. 2007). Under those circumstances, the appellant must be allowed a reasonable opportunity to correct the defective notice of appeal. *Id.* at 190.

² Appellant was indicted and arrested for burglary of a habitation and evading arrest under trial court cause number 1232H. After failing to appear in court following his release on bond from those charges, he was indicted for bail jumping under trial court cause number 1256H. Pursuant to an inquiry by the clerk of this court, the court has been informed that the burglary charges have been dismissed, but the bail jumping charges are currently pending.

Accordingly, we find Appellant's original notice sufficiently showed his desire to appeal his conviction for evading arrest, was timely filed, and was timely amended to reflect the correct cause number. See TEX. R. APP. P. 25.2(c)(2), (f); 26.2(a)(1). As such, because the trial court has issued a certification reflecting that Appellant has the right of appeal in cause number 1232H, we find the jurisdiction of this court was properly invoked.

We now abate this appeal and remand the cause to the trial court for further proceedings. Upon remand, the trial court shall determine the following:

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

Should it be determined that Appellant wants to continue the appeal and that he is indigent and entitled to appointed counsel, the name, address, email address, telephone number, and State Bar of Texas identification number of 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 clerk's record to be filed with the clerk of this court by July 21, 2017. Although not necessary to the jurisdiction of this court, the trial court is also vested with jurisdiction to consider, should it so choose, Appellant's motion for bail. All other appellate deadlines are suspended pending reinstatement of the appeal.

It is so ordered.

Per Curiam

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