



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

No. 07-17-00286-CR

RUPERT RAYMOND WORK, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 21st District Court
Burleson County, Texas
Trial Court No. 14,992, Honorable Carson Campbell, Presiding

February 23, 2018

ORDER OF ABATEMENT AND REMAND

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

Appellant Rupert Raymond Work was convicted of assault causing bodily injury¹ and sentenced to 365 days in Burleson County Jail. Appellant's retained counsel filed a notice of appeal from the trial court's judgment.²

¹ TEX. PENAL CODE ANN. § 22.01(a)(1) (West Supp. 2017).

² This appeal was transferred from the Tenth Court of Appeals to our Court under an order of the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West 2013); TEX. R. APP. P. 41.3 (precedent of transferor court).

We previously abated this appeal and remanded the cause to the trial court on October 12, 2017, after appellant failed to request and make payment arrangements for the clerk's record and reporter's record. Pursuant to our order of abatement, the trial court held a hearing and found that appellant desired to prosecute his appeal and was not indigent. The appeal was reinstated on our docket on November 16. The reporter's record was filed on December 19, and the clerk's record was filed on December 27.

Consequently, appellant's brief was due on January 26, 2018. Appellant did not file a brief or request an extension of time by this deadline. By letter on February 2, we sent appellant notice that his brief was past due. We also advised appellant that if he failed to file his brief by February 12, the appeal would be abated and the cause remanded to the trial court for further proceedings without further notice. To date, appellant has not filed a brief. And, we have received no further communication from appellant's counsel.

Appellate Rule 38.8(b) provides, in part, that an appellant's failure to file a brief in a criminal case does not authorize either dismissal of the appeal or consideration of the appeal without briefs, unless the trial court has found either (1) the appellant no longer desires to prosecute the appeal, or (2) the appellant is not indigent but has not made the necessary arrangements for filing a brief. TEX. R. APP. P. 38.8(b)(1), (4). We, therefore, abate this appeal and remand the cause to the trial court for further proceedings pursuant to Appellate Rule 38.8(b).

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

1. whether appellant still desires to prosecute his appeal;

2. whether appellant is indigent and entitled to the appointment of counsel;
3. whether retained counsel has abandoned the appeal;
4. whether appellant has failed to make the necessary arrangements for filing a brief;
5. the reason for the failure to file a brief; and
6. if appellant desires to continue the appeal, the date the Court may expect appellant's brief to be filed.

The trial court shall appoint appellate counsel should it determine that appellant desires to prosecute the appeal, is indigent, and desires appointed counsel instead of his retained counsel. The name, address, e-mail address, telephone number, and state bar number of any newly-appointed counsel shall be provided to the Clerk of this Court in an order of the trial court.

The trial court shall issue findings of fact and conclusions of law addressing the foregoing subjects and shall cause to be developed (1) a clerk's record containing the findings of fact and conclusions of law, and (2) a reporter's record transcribing any evidence and argument presented. The trial court shall also cause the record containing the court's findings and conclusions and the hearing record to be filed with the Clerk of this Court on or before March 26, 2018. Should additional time be needed to perform these tasks, the trial court may request same on or before that date.

It is so ordered.

Per Curiam

Do not publish.