



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

No. 07-17-00379-CR

CHARLES BRANDON JOHNSON, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 89th District Court
Wichita County, Texas
Trial Court No. 56,863-C, Honorable Charles M. Barnard, Presiding

May 8, 2018

ORDER OF ABATEMENT AND REMAND

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

Appellant Charles Brandon Johnson appeals his conviction for aggravated robbery. The appellate record has been filed and appellant's brief was originally due on March 8, 2018. By letter of March 21, 2018, we granted appellant an extension to May 7 to file a brief. We also admonished appellant's counsel that no further extensions would be granted and failure to file a brief by May 7 would 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. 38.8(b)(2), (3). To date, appellant's counsel has not filed a brief, but has

instead filed a motion for extension seeking an additional thirty days to complete the brief. We deny the motion.

Accordingly, we abate this appeal and remand the cause to the 89th District Court of Wichita County (trial court) for further proceedings. Upon remand, the trial court shall determine the following:

1. whether appellant still desires to prosecute the appeal;
2. whether appellant is indigent;
3. whether appellant has been denied the effective assistance of counsel due to counsel's failure to timely file an appellate brief, *see Ex parte Briggs*, 187 S.W.3d 458, 467 (Tex. Crim. App. 2005) (holding "a reasonably competent attorney—regardless of whether he is retained or appointed—must seek to advance his client's best defense in a reasonably competent manner");
4. whether new counsel should be appointed; and
5. if appellant desires to continue the appeal, the final date on which appellant will file appellant's brief.

The trial court is also directed to enter such orders necessary to address the aforementioned questions. So too shall it include its findings on those matters in a supplemental record and cause that record to be filed with this court by June 8, 2018. If it is determined that appellant desires to proceed with the appeal, is indigent, and has been denied the effective assistance of counsel, the trial court may appoint him new counsel; the name, address, email address, and phone number of any new counsel appointed shall be included in the aforementioned findings. Should further time be needed to perform these tasks, then same must be requested before June 8, 2018.

It is so ordered.

Per Curiam

Do not publish.