



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

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No. 07-18-00075-CR

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**AARON MICHAEL FRANKS, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the County Court  
Deaf Smith County, Texas  
Trial Court No. 2017-0010, Honorable DJ. Wagner, Presiding

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**May 15, 2018**

**ORDER OF ABATEMENT AND REMAND**

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

Appellant Aaron Michael Franks appeals his conviction for driving while intoxicated, second offense. The clerk's record and reporter's record were due on April 4, 2018. On March 23, 2018, the clerk notified us that appellant had not made payment arrangements for the clerk's record. By letter of March 27, 2018, we directed appellant to make acceptable payment arrangements for the clerk's record by April 9, and admonished him that failure to do so would result in the appeal being abated and the cause remanded to the trial court for further proceedings. See TEX. R. APP. P. 35.3(a)(2),

37.3(a)(2). On April 3, 2018, the reporter also notified us that appellant had not requested preparation or made payment arrangements for the reporter's record. By letter of April 5, 2018, we directed appellant to request preparation and make acceptable payment arrangements for the reporter's record by April 16 or we would abate the appeal and remand the cause to the trial court. See TEX. R. APP. P. 35.3(b)(2), (3); 37.3(a)(2).

To date, appellant has not complied with the court's directive and the appellate record has not been filed. Further, the county clerk has notified us that the trial court has not filed a certification of appellant's right of appeal. See TEX. R. APP. P. 25.2(a)(2).

Accordingly, we abate this appeal and remand the cause to the Deaf Smith County Court (trial court) for further proceedings. Upon remand, the trial court shall enter a certification of appellant's right of appeal in compliance with Texas Rule of Appellate Procedure 25.2. The trial court shall also determine the following:

1. whether appellant still desires to prosecute the appeal;
2. whether appellant is indigent;
3. whether appellant is entitled to have the clerk's record and reporter's record furnished without charge;
4. if appellant is not entitled to have the clerk's record and reporter's record furnished without charge, the date appellant will make acceptable payment arrangements for the clerk's record and reporter's record;
5. whether appellant has been denied the effective assistance of counsel due to counsel's failure to timely request and make payment arrangements for the appellate record, 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"); and
6. if found indigent, whether new counsel should be appointed.

The trial court is directed to enter such orders necessary to address the aforementioned questions. So too shall it include the certification of appellant's right of appeal and its findings on the above matters in a supplemental record and cause that record to be filed with this court by June 15, 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 15, 2018.

It is so ordered.

Per Curiam

Do not publish.