



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

No. 07-18-00169-CR

KIANA MESHON MITCHELL, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the County Court at Law No. 2
Ellis County, Texas
Trial Court No. 1710074, Honorable A. Gene Calvert, Jr., Presiding

May 24, 2018

ORDER OF ABATEMENT AND REMAND

Before CAMPBELL and PIRTLE and PARKER, JJ.

Appellant Kiana Meshon Mitchell appeals her conviction for possession of marijuana, in an amount of two ounces or less,¹ and sentence of forty-five days confinement.² The trial court suspended appellant's sentence and placed her on

¹ TEX. HEALTH & SAFETY CODE ANN. § 481.121(a), (b)(1) (West 2017) (a Class B misdemeanor).

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).

community supervision for fifteen months. Now pending before this Court is *Appellant's Second Amended Motion to Extend Time to Receive Record under Rule 20.2*. We grant the motion.

The clerk's record and reporter's record were due on April 2, 2018. The clerk's record has been filed, but appellant has not made payment arrangements for the reporter's record. Appellant's appointed trial counsel filed a notice of appeal. On May 3, 2018, the trial court granted appellant's motion to substitute her appointed counsel with retained counsel. At the hearing on May 3, appellant's retained counsel also requested a finding that appellant was indigent and entitled to the reporter's record without charge. The trial court clarified that appellant was appointed trial counsel without a finding that she was indigent, but did not make a ruling on appellant's indigent status at the May 3 hearing.

On May 11, 2018, the reporter notified this Court that appellant had not made payment arrangements for the reporter's record. See TEX. R. APP. P. 35.3(b)(3). By letter of May 14, 2018, we directed appellant to make acceptable payment arrangements for the reporter's record by May 24 and extended the deadline to file the reporter's record to June 4. In response, appellant filed the pending motion pursuant to appellate rule 20.2, requesting that we allow the trial court to determine whether appellant is indigent and entitled to have the reporter's record furnished without charge. See TEX. R. APP. P. 20.2.

Accordingly, we grant appellant's motion, abate this appeal, and remand the cause to the trial court for further proceedings. See TEX. R. APP. P. 37.3(a)(2), 20.2. On remand, the trial court shall utilize whatever means it finds necessary to determine the following:

- (1) whether appellant is indigent;
- (2) whether appellant is entitled to have the reporter's record furnished without charge;
- (3) if appellant is not entitled to have the reporter's record furnished without charge, the date appellant will make acceptable payment arrangements for the reporter's record; and
- (4) what orders, if any, should be entered to assure that the reporter's record will be filed promptly and that the appeal will be diligently pursued.

We further direct the trial court to issue findings of fact and conclusions of law addressing the foregoing subjects. Additionally, the trial court 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 the evidence and argument presented at any hearing held. The trial court shall cause the hearing record, if any, and the record containing the court's findings and conclusions, to be filed with the clerk of this Court on or before June 25, 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.