



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

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No. 07-22-00184-CR

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**RICO MARTINEZ, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 140th District Court  
Lubbock County, Texas  
Trial Court No. DC-2022-CR-0082, Honorable Douglas H. Freitag, Presiding

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December 29, 2022

**ORDER OF ABATEMENT AND REMAND**

Before **QUINN, C.J.**, and **DOSS** and **YARBROUGH, JJ.**

Appellant, Rico Martinez, appeals his conviction for injury to a child, elderly individual, or disabled individual<sup>1</sup> and sentence to forty years' confinement. Appellant's brief was originally due November 16, 2022, but was not filed. By letter of November 23, 2022, we admonished Appellant's counsel that failure to file a brief by December 5 would result in the appeal being abated and the cause remanded to the trial court for further

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<sup>1</sup> See TEX. PENAL CODE ANN. § 22.04(e).

proceedings. Appellant's counsel has not filed a brief or had any further communication with this Court to date.

We, therefore, abate the appeal and remand the cause to the trial court for further proceedings. See TEX. R. APP. P. 38.8(b)(2), (3). Upon remand, the trial court shall determine the following:

- (1) whether Appellant still desires to prosecute the appeal;
- (2) whether Appellant is indigent;
- (3) why a timely appellate brief has not been filed on behalf of Appellant;
- (4) whether Appellant's counsel has abandoned the appeal;
- (5) whether Appellant has been denied the effective assistance of counsel;
- (6) whether new counsel should be appointed; and
- (7) if appellant desires to continue the appeal, the date the Court may expect

Appellant's brief to be filed.

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 January 30, 2023. 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 new counsel; the name, address, email address, phone number, and state bar number of any newly appointed counsel shall be included in the aforementioned findings.

Should counsel file a brief on or before January 13, 2023, she is directed to immediately notify the trial court of the filing, in writing, whereupon the trial court shall not be required to take any further action.

It is so ordered.

Per Curiam

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