



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

No. 07-22-00223-CR

PABLO GONZALEZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 140th District Court
Lubbock County, Texas
Trial Court No. 2019-418419, Honorable Douglas H. Freitag, Presiding

December 14, 2022

**ORDER ON JOINT MOTION TO ABATE APPEAL TO CONSIDER AND
RULE ON OUT-OF-TIME MOTION FOR NEW TRIAL, OR IN THE
ALTERNATIVE, MOTION TO REVERSE CONVICTION**

Before QUINN, CJ., and DOSS and YARBROUGH, JJ.

Appellant, Pablo Gonzalez, was convicted by a jury of online solicitation of a minor and sentenced to ten years' confinement.¹ The appellate record has been filed. Pending before this Court is a joint motion to abate for consideration of and a ruling on an out-of-

¹ TEX. PENAL CODE ANN. § 33.021(b).

time motion for new trial, or alternatively for reversal of Appellant's conviction. We grant the request to abate the appeal.

The parties assert that subsequent to the time period in which to file a motion for new trial, the State received new information concerning the lead agent on Appellant's case which impacted the agent's credibility. The agent was one of only two witnesses to testify against Appellant during the guilt-innocence phase and his credibility qualified as essential impeachment evidence under article 39.14 of the Texas Code of Criminal Procedure.²

The parties maintain that neither party is at fault for the untimely discovery of the information regarding the agent. But had the information been disclosed to the defense either before trial or during the period in which to file a motion for new trial, "the State either would have dismissed the charges prior to the start of trial or would have agreed to the granting of a new trial."

The parties agree that article 39.14 was violated and that an appropriate remedy would be to abate this appeal and remand the cause for the trial court to consider and rule on an out-of-time motion for new trial. Generally, Rule 2 of the Texas Rules of Appellate Procedure should not be used to lengthen procedural time limits. *Oldham v. State*, 977 S.W.2d 354, 360 (Tex. Crim. App. 1998). However, Rule 43.6 of the Texas Rules of Appellate Procedure gives this Court discretion to "make any other appropriate order that the law and the nature of the case require[s]."

² Article 39.14(h) provides "the state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged."

Accordingly, limited to the facts of this case, we apply Rule 43.6 and abate this appeal and remand the cause to the trial court for further proceedings. On remand, the trial court should utilize whatever means necessary to determine the factual basis on which the parties contend that Appellant should be entitled to relief and develop a record toward that end. The trial court may execute findings of fact and conclusions of law and may cause its findings, conclusions, and any necessary orders to be included in a supplemental clerk's record to be filed with the Clerk of this Court no later than January 13, 2023. While the appeal is abated all deadlines in which to file appellate briefs are suspended.

It is so ordered.

Per Curiam

Do not publish.