



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

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No. 07-22-00301-CR  
No. 07-23-00019-CR

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**JOSE FALCON, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 462nd District Court  
Denton County, Texas  
Trial Court Nos. F21-3263-462 & F21-3264-462, Honorable Don Emerson, Sitting by Assignment

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April 27, 2023

**ORDER OF ABATEMENT AND REMAND**

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

Appellant, Jose Falcon, appeals his two convictions for theft<sup>1</sup> and concurrent sentences to nine years' confinement.<sup>2</sup> Appellant's brief was originally due February 13, 2023. We subsequently granted Appellant's appointed counsel an extension to March

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<sup>1</sup> See TEX. PENAL CODE ANN. § 31.03.

<sup>2</sup> Originally appealed to the Second Court of Appeals, this appeal was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. See TEX. GOV'T CODE ANN. § 73.001.

15, 2023, to file a brief. No brief was filed by this deadline. By letter of March 24, 2023, we notified Appellant's counsel that the brief was overdue and admonished her that failure to file a brief by April 3 would result in the appeals being abated and the causes remanded to the trial court for further proceedings. Appellant's counsel has not filed a brief or had any further communication with this Court to date.

We, therefore, abate the appeals and remand the causes 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 appeals;
- (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 appeals;
- (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 appeals, 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 May 30, 2023. If it is determined that Appellant desires to proceed with the appeals, 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 May 11, 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

Do not publish.