



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

No. 07-23-00192-CR

MIKO BUTLER, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 364th District Court
Lubbock County, Texas
Trial Court No. DC-2023-CR-0573 (Counts I & II), Honorable William R. Eichman II, Presiding

November 14, 2023

ORDER OF ABATEMENT AND REMAND

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

Charles Blevins was appointed to represent appellant, Miko Butler, in this appeal. Now pending before the court is his “fourth” motion to extend appellant’s briefing deadline. We deny same and remand the cause to the trial court.

We granted Blevins and his client an initial 30-day extension of the deadline to October 9, 2023. It went unheeded without communication with the court. That resulted in the court ordering that “unless Appellant’s brief is filed with this Court on or before Thursday, October 26, 2023, this appeal will be abated and the cause remanded to the

trial court for further proceedings pursuant to Texas Rule of Appellate Procedure 38.8(b)(2).” That deadline passed without a brief or communication from Blevins. Instead, on November 6, 2023, we received a motion seeking to extend the deadline to November 8, 2023. Allegedly, Blevins was too busy to meet the October 26th deadline. Why he did not inform the court of that before October 26th went unexplained. Nevertheless, the deadline was extended to November 8th per the request. No brief followed. Instead, Blevins waited until November 9, 2023, to again move for an extension, and this time represented that illness barred him from complying. Purportedly, he can file the brief by November 20, 2023. Having admonished Blevins multiple times that neglecting to comply with earlier deadlines would result in our remanding the cause to determine whether appellant has been denied effective assistance of counsel, we enforce that admonishment.

We deny appellant’s current motion for extension, 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 by which the appellant’s brief must 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 December 14, 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 appellant's counsel file a brief on or before November 20, 2023, he 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.

Regrettably, the conduct about which we speak is not unique to this appeal. It regularly occurs. Should it continue in this or any other proceeding before the Seventh Court of Appeals, it will result in appropriate response, which may include contempt proceedings and the initiation of a disciplinary complaint with the State Bar of Texas.

It is so ordered.

Brian Quinn
Chief Justice

Do not publish.