



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

No. 07-23-00274-CR

KENT CARL SCHWARTZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 218th District Court
Atascosa County, Texas
Trial Court No. 20-11-0300-CRA, Honorable Russell Wilson, Presiding

November 3, 2023

ORDER OF ABATEMENT AND REMAND

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

Appellant, Kent Carl Schwartz, appeals his conviction for theft¹ and sentence to five years confinement, suspended in favor of community supervision.² The appellate record was originally due August 22, 2023. The clerk's record was filed by this deadline, but the reporter's record was not. We subsequently granted the reporter two extensions

¹ See TEX. PENAL CODE ANN. § 31.03(e)(5).

² Originally appealed to the Fourth 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.

to file the reporter's record due to her caseload. By letter of September 28, 2023, we admonished the reporter that failure to file the reporter's record by October 23 could result in the appeal being abated and the cause remanded to the trial court for further proceedings without further notice. To date, the reporter's record has not been filed and the reporter has had no further communication with this Court.

Accordingly, we abate the appeal and remand the cause to the trial court for further proceedings. See TEX. R. APP. P. 35.3(c) ("The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed."); 37.3(a)(2) (requiring appellate courts to "make whatever order is appropriate to avoid further delay and to preserve the parties' rights" when the appellate record is not timely filed). On remand, the trial court shall determine the following:

- (1) what tasks remain to complete the filing of the reporter's record;
- (2) why the reporter has not completed the necessary tasks;
- (3) what amount of time is reasonably necessary for the completion of those tasks; and
- (4) whether the reporter can complete the tasks within the time the trial court finds reasonable.

Should the trial court determine that the reporter will require more than thirty days to complete, certify, and file the reporter's record, it shall arrange for a substitute reporter to do so. The trial court is directed to enter such orders necessary to address the aforementioned questions. So too shall it include its findings on those matters in a supplemental clerk's record and cause that record to be filed with this Court by December 4, 2023.

Should the reporter file the record on or before November 17, 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.