



**IN THE  
TENTH COURT OF APPEALS**

**No. 10-09-00295-CR**

**JAMES ROBERT VASQUEZ,**

**Appellant**

**v.**

**THE STATE OF TEXAS,**

**Appellee**

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**From the 13th District Court  
Navarro County, Texas  
Trial Court No. 32165-CR**

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**SUPPLEMENTAL ABATEMENT ORDER**

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In a December 15, 2010 order, we abated this cause for an initial sixty-day period for the trial court to address alleged errors and omissions in the reporter's record. These alleged errors and omissions are set out in Appellant's "motion for new trial, alternatively, motion to require the court reporter to supplement reporter's record" ("Appellant's motion"), which was filed on September 23, 2010. We requested a response from the State to Appellant's motion, but one was not filed.

The trial court issued findings of fact and conclusions of law that are in a

supplemental clerk's record filed on March 8, 2011.<sup>1</sup> Two of those findings state:

5. Counsel for the Appellant and Appellee are working together to determine whether inaccuracies exist in the reporter's record even though *no reporter's record exists at this time*.
6. Due to the fact that *no reporter's record currently exists*, it is impossible for counsel to agree on any corrections without knowing what corrections, if any, exist.

[Emphases added.]

The trial court's findings incorrectly state that no reporter's record currently exists. This Court filed a reporter's record (certified by Nancy Currie on August 14, 2010) in this cause on August 23, 2010. Presumably, a copy of the reporter's record was filed with the Navarro County District Clerk. Appellant's original counsel was able to obtain a copy of the reporter's record, as one was obviously used in the preparation of Appellant's motion, which details dozens of alleged inaccuracies in the reporter's record, and, for most of them, states how the reporter's record should accurately read.<sup>2</sup>

It is the trial court's duty to settle disputes about the reporter's record's alleged inaccuracies. *See* TEX. R. APP. P. 34.6(e)(2, 3). We thus will continue the abatement of this appeal for an additional sixty days.

To assist the trial court in carrying out its duty to settle disputes about the reporter's record's alleged inaccuracies, upon the issuance of this supplemental

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<sup>1</sup> The findings state that the trial court's official court reporter was unable to use the computer disk that Nancy Currie provided.

<sup>2</sup> It is not revealed what device was used by Appellant's original counsel as a basis for his asserted corrections to the reporter's record. Given the specificity of the asserted corrections, we are hopeful that the disputes about the reporter's record's alleged inaccuracies can be settled by the parties and the trial court with the assistance of Appellant's original counsel.

abatement order, the Clerk of this Court shall forward to the trial court judge a copy of Appellant's "motion for new trial, alternatively, motion to require the court reporter to supplement reporter's record," filed in this Court on September 23, 2010.

Mr. Robert C. Dunn, Appellant's original counsel, has withdrawn, and new counsel has been appointed for Appellant for this appeal. Because Mr. Dunn appears to have special knowledge about the alleged inaccuracies in the reporter's record, the trial court shall require Mr. Dunn to assist (formally or informally, as is necessary) the parties and the trial court in resolving the alleged inaccuracies.

We abate this appeal for the trial court to hold one or more hearings:

- (1) to determine whether inaccuracies exist in the reporter's record, and if so, whether the parties can agree to correct any of them without the court reporter's recertification (TEX. R. APP. P. 34.6(e)(1)); and
- (2) to settle the dispute if inaccuracies exist in the reporter's record and the parties cannot agree on whether or how to correct any of them (TEX. R. APP. P. 34.6(e)(2)).

While the appeal is abated, the Court requests the trial court (or a party at the trial court's direction) to advise the Clerk of this Court in writing on a semi-monthly basis regarding the status of this matter.

Therefore, this appeal is abated for an additional period of sixty days from the date of this order for the trial court to determine the issues identified above. The trial court has discretion to schedule hearings during the abatement period as necessary. **All hearings shall be attended by a certified court reporter, who shall prepare a**

**transcription of such hearings and file that transcription or those transcriptions as a supplemental reporter's record or records in this appeal.**

The trial court shall prepare written findings of fact and conclusions of law with regard to the issues identified in this abatement order. The district clerk shall prepare a supplemental clerk's record containing such findings of fact and conclusions of law as well as any pleadings, motions, responses, or objections filed with regard to this matter and any orders signed by the trial court.

The district clerk and the court reporter shall file their supplemental records with the Clerk of this Court within seventy-five (75) days after the date of this Order. If the trial court determines that additional time is required to resolve the issues identified, the trial court (or a party at the trial court's direction) shall file a written request for additional time explaining the reason(s) and the diligence that has been exercised in attempting to comply with the sixty-day deadline established by this Order.

PER CURIAM

Before Chief Justice Gray,  
Justice Davis, and  
Justice Scoggins  
Appeal abated  
Order issued and filed April 6, 2011  
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