



IN THE
TENTH COURT OF APPEALS

No. 10-12-00275-CR

RICHARD DON MOORE,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 54th District Court
McLennan County, Texas
Trial Court No. 2007-1190-C2**

ORDER

After being charged by indictment with felony possession of a controlled substance (one gram or more but less than four grams of methamphetamine), Appellant Richard Don Moore pleaded guilty. Pursuant to a plea bargain, Moore was sentenced to five years in prison and assessed a \$1,000 fine on January 23, 2008, but the prison sentence was suspended and Moore was placed on community supervision for five years.

On March 8, 2012, the State filed a motion to revoke Moore's probation

(community supervision), alleging eleven grounds as violations of Moore's terms and conditions of probation. At the revocation hearing on June 28, 2012, Moore pleaded true to grounds one through four and seven through eleven in the State's motion to revoke, and the trial court revoked Moore's probation and sentenced him to five years in prison and a \$1,000 fine.

The judgment was signed on June 28, 2012. The clerk's record contains a Waiver of Appeal dated June 28, 2012, and it is signed by Moore and his trial attorney and is approved by the trial judge. The trial court's certification of defendant's right of appeal, also dated June 28, 2012, states that "the defendant has waived the right of appeal." Despite the waiver of his right to appeal, Moore filed a pro se notice of appeal with this court on July 27, 2012. The trial court subsequently appointed appellate counsel for Moore.

Moore's appointed appellate counsel has filed a motion to withdraw that asserts that his continued work on this appeal is futile because the trial court has not granted Moore the right of appeal in this case. The appointment of counsel of an indigent defendant is under the sole authority of the trial court. *See Enriquez v. State*, 999 S.W.2d 906, 907-08 (Tex. App.—Waco 1999, order); TEX. CODE CRIM. PROC. ANN. art. 26.04(a) (West Supp. 2012); *cf. Meza v. State*, 206 S.W.3d 684, 688 (Tex. Crim. App. 2006). The trial court retains jurisdiction to appoint counsel for an indigent defendant and, by implication, to rule on appointed counsel's motion to withdraw. *See Enriquez*, 999 S.W.2d at 908; *see also Meza*, 206 S.W.3d at 688. The motion to withdraw is therefore dismissed.

Moore has also filed an alternative motion requesting that this appeal be abated and remanded to the trial court to allow Moore an opportunity to reconsider his waiver of his right of appeal “[f]or all the reasons stated” in Chief Justice Gray’s concurring and dissenting opinion to the Clerk’s dismissal notice letter in this case. *See Adcock v. State*, No. 10-12-00291-CR, 2012 WL 6674523, at *2-4 (Tex. App.—Waco Dec. 20, 2012 (Gray, C.J., concurring and dissenting)).

The Court grants Moore’s request for an abatement of this appeal. This case is remanded to the trial court for a hearing pertaining to Moore’s waiver of his right of appeal.

The trial court shall conduct the hearing within twenty-one (21) days after the date of this order. The trial court clerk and court reporter shall file supplemental records within thirty-five (35) days after the date of this order.

PER CURIAM

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Motion to withdraw dismissed
Motion to abate granted
Order issued and filed February 7, 2013
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