



**IN THE  
TENTH COURT OF APPEALS**

**No. 10-13-00045-CR**

**WILLIAM RAY PHILLIPS, II,**

**Appellant**

**v.**

**THE STATE OF TEXAS,**

**Appellee**

**From the 54th District Court  
McLennan County, Texas  
Trial Court No. 2012-1204-C2**

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**ABATEMENT ORDER**

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On September 20, 2012, appellant, William Ray Phillips II, was determined to be indigent and attorney Seth Sutton was appointed to represent him in this case. However, on September 28, 2012, prior to trial in this matter, appellant signed a waiver of his right to counsel in the case pending against him. The trial court allowed appellant to represent himself but, according to the docket sheet, Sutton remained assigned to assist appellant as stand-by counsel.

Appellant was subsequently convicted of the charged offense of failing to register as a sex offender, *see* TEX. CODE CRIM. PROC. ANN. art. 62.102 (West 2006), and sentenced to ten years' incarceration in the Institutional Division of the Texas Department of Criminal Justice. This sentence was ordered to run consecutively with another conviction in the United States District Court for the Western District of Texas—Cause # W-02-CR-117(01).

Nevertheless, the Clerk's Record does not demonstrate that appellant was appointed appellate counsel or that he waived his right to counsel on appeal. On February 8, 2013, appellant filed his pro se notice of appeal in the trial court.

Article 1.051(d)(1) of the Texas Code of Criminal Procedure provides that an eligible indigent defendant is entitled to have the trial court appoint an attorney to represent him in an appeal to the court of appeals. *See id.* art. 1.051(d)(1) (West Supp. 2012). In light of article 1.051(d)(1), we sent a letter to the trial court on March 20, 2013, seeking guidance as to whether this matter should be remanded for a determination of indigence and the appointment of appellate counsel. We have received a request from the trial court requesting a remand of this matter.

Accordingly, we abate this appeal to the trial court to conduct any necessary hearings for a determination of indigence and the appointment of counsel. Any hearing should be held within 28 days of the date of this Order. The supplemental clerk's and reporter's records required by the rule, if any, are ordered to be filed within 42 days of the date of this Order.

PER CURIAM

Before Chief Justice Gray,  
Justice Davis, and  
Justice Scoggins

Appeal abated

Order issued and filed April 4, 2013

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