

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-05-00080-CR

Diego Garcia Flores, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 299TH JUDICIAL DISTRICT
NO. 3040850, HONORABLE JON N. WISSER, JUDGE PRESIDING**

MEMORANDUM OPINION

This is an appeal from a conviction for aggravated robbery. Appellant is represented by a retained attorney, Mr. Gilbert Villarreal. Although Mr. Villarreal has informed the Court that he was retained merely to file a motion for new trial and not to prosecute the appeal, he signed the notice of appeal as presently attorney of record. *See* Tex. R. App. P. 6.1(a).

The reporter's record has not been filed. Appellant filed an affidavit of indigence and requested a free record. No action has been taken on the request.

The appeal is abated. The district court shall promptly act on appellant's motion for a free record, conducting a hearing if the fact of appellant's indigence is contested. *See* Tex. R. App. P. 37.3(a)(2). If the court finds that appellant is presently indigent, the court shall order the preparation of the reporter's record at no cost to appellant and appoint substitute counsel to effectively represent him on appeal. A record from the hearing, if held, and copies of all findings

and orders shall be forwarded to the Clerk of this Court for filing as a supplemental record no later than July 22, 2005.

W. Kenneth Law, Chief Justice

Before Chief Justice Law, Justices Patterson and Puryear

Filed: June 17, 2005

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