

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-08-00522-CR**

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**Carlton McEwen, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 403RD JUDICIAL DISTRICT  
NO. D-1-DC-08-904053, HONORABLE BRENDA KENNEDY, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

**PER CURIAM**

Appellant's brief was due in this Court on March 2, 2009. On March 27, 2009, we notified appellant's counsel that appellant's brief was overdue and that if we did not receive a satisfactory response from counsel on or before April 6, 2009, a hearing before the district court pursuant to Tex. R. App. P. 38.8(b) would be ordered. On April 6, we received a letter from appellant's counsel in which he represented that the brief and a motion for leave to file late brief would be filed on or before April 8, 2009. To date, appellant's brief has not been filed.

We therefore abate the cause and remand it to the district court to hold a hearing in accordance with rule 38.8 of the rules of appellate procedure. Tex. R. App. P. 38.8(b)(2), (3). The district court shall hold a hearing immediately to determine whether appellant still wishes to prosecute his appeal, whether appellant is indigent, and whether counsel has abandoned the appeal.

*See id.* If appellant desires to appeal and is indigent, the district court should make appropriate orders to ensure that appellant is adequately represented on appeal. *See id.* Following the hearing, the district court should order the appropriate supplementary clerk's and reporter's records to be prepared and forwarded to this Court no later than June 29, 2009. *See id.*

Before Justices Patterson, Pemberton and Waldrop

Abated

Filed: May 28, 2009

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