

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-09-00061-CR

Barry Dean Garrett, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF BELL COUNTY, 264TH JUDICIAL DISTRICT
NO. 63208, HONORABLE MARTHA J. TRUDO, JUDGE PRESIDING**

MEMORANDUM OPINION

PER CURIAM

Appellant's brief was due in this Court on April 8, 2009. On April 30, 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 May 11, 2009, a hearing before the district court pursuant to Tex. R. App. P. 38.8(b) would be ordered. To date, appellant's brief has not been filed, nor have we received a response from counsel.

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 July 17, 2009. *See id.*

Before Justices Patterson, Pemberton and Waldrop

Abated

Filed: June 17, 2009

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