

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-11-00256-CR

Donald John Noland, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF BELL COUNTY, 264TH JUDICIAL DISTRICT
NO. 63702, HONORABLE FANCY H. JEZEK, JUDGE PRESIDING**

MEMORANDUM OPINION

PER CURIAM

Appellant's brief was due on June 9, 2011. On counsel's motions, the time for filing was extended to September 21, 2011. On October 4, 2011, the Court granted appellant's fifth motion for extension of time and ordered appellant's counsel, Charles F. Montgomery, Jr., to file a brief on appellant's behalf no later than October 5, 2011, the date requested by counsel. Appellant's counsel now requests a sixth extension of time, requesting that the deadline to file appellant's brief be extended to October 21, 2011. To date, counsel has not filed a brief.

Appellant's sixth motion for extension of time to file appellant's brief is denied. We abate the cause and remand it to the trial 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 trial court shall conduct a hearing to determine whether appellant desires to prosecute this appeal, whether appellant is indigent, and whether counsel has abandoned the appeal. *See id.* If appellant desires to appeal and is indigent, the trial court

should make appropriate orders to ensure that appellant is adequately represented on appeal. *See id.*
A record from the hearing, including copies of all findings and order and a transcription of the court reporter's notes, shall be forwarded to the Clerk of this Court for filing as a supplemental record no later than December 6, 2011. *See* Tex. R. App. P. 38.8(b)(3).

Before Chief Justice Jones, Justices Pemberton and Henson

Abated

Filed: November 7, 2011

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