

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-12-00653-CR

Frank Mosqueda, Appellant

v.

The State of Texas, Appellee

**FROM THE COUNTY COURT AT LAW NO. 4 OF TRAVIS COUNTY
NO. D-1-DC-11-100117, HONORABLE JON WISSER, JUDGE PRESIDING**

MEMORANDUM OPINION

Frank Mosqueda filed his notice of appeal on October 1, 2012, and his brief was due February 11, 2013, but was never filed. This Court sent an overdue-brief notice to Mosqueda's appointed counsel, who failed to provide any response. We then abated the appeal for a trial court hearing to determine whether Mosqueda wished to prosecute this appeal, whether he was indigent, and whether his appointed counsel had abandoned this appeal. *See* Tex. R. App. P. 38.8(b)(2), (3). The trial court notified us that Mosqueda has absconded from supervision and that Mosqueda's counsel, who has been unable to locate or communicate with his client, seeks to abandon this appeal. Under the circumstances, we may consider Mosqueda's appeal without a brief. *See id.* R. 38.8(b)(4) (authorizing appellate court to "consider the appeal without briefs, as justice may require" when appellant in criminal case fails to file brief).

A grand jury indicted Mosqueda for the third-degree felony offense of family-violence assault. *See* Tex. Penal Code § 22.02 (b)(2). Mosqueda waived his right to a jury trial and pled not guilty. At the conclusion of the bench trial, the court convicted Mosqueda of family-violence assault and sentenced him to two years' imprisonment. *See id.*

Because Mosqueda failed to file a brief, no issues are properly before this court. *See* Tex. R. App. P. 38.1(f). We have reviewed the record in the interest of justice and found no unassigned fundamental error. *See* Tex. R. App. P. 38.8(b)(4); *Lott v. State*, 874 S.W.2d 687, 688 (Tex. Crim. App. 1994). Accordingly, we affirm the trial court's judgment of conviction.

Jeff Rose, Justice

Before Justices Puryear, Pemberton, and Rose

Affirmed

Filed: June 28, 2013

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