

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-14-00204-CR

State of Texas, Appellant

v.

Robert Andrew Johnson, Appellee

**FROM THE COUNTY COURT AT LAW NO. 2 OF WILLIAMSON COUNTY
NO. 12-09862-2, HONORABLE TIMOTHY L. WRIGHT, JUDGE PRESIDING**

MEMORANDUM OPINION

After the trial court granted defendant Robert Andrew Johnson’s motion to quash the complaint and information, the State filed its notice of appeal under Article 44.01 of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. art. 44.01(a)(1). The State’s brief was originally due on May 1, 2013, but was not filed. Instead, the State subsequently filed three motions for extension of time. We granted the motions, making the State’s brief due by August 20, 2014. However, the State failed to file a brief by that date. On August 27, 2014, we notified the State that its brief was overdue. To date, the State has not filed a brief or otherwise responded to our notice.

Under Texas Rule of Appellate Procedure 38.8(b), when an appellant in a criminal case fails to timely file a brief, an appellate court must first notify counsel that a brief was due and not filed. Tex. R. App. P. 38.8(b). If a satisfactory response is not received, the appellate court abates and remands the appeal to the trial court to determine “whether the appellant desires to prosecute his appeal, whether the appellant is indigent, or if not indigent, whether retained counsel

has abandoned the appeal.” *Id.* However, “Rule 38.8 plainly was ‘intended to protect the interests of a criminal-defendant appellant.’” *State v. Palacios*, 968 S.W.2d 467, 468 (Tex. App.—Fort Worth 1998, no pet.) (citing *State v. Sanchez*, 764 S.W.2d 920, 921 (Tex. App.—Austin 1989, no pet.)). When the State prosecutes an appeal pursuant to Article 44.01 of the Texas Code of Criminal Procedure, the protections given to an appellant under Rule 38.8(b) do not apply. *State v. Garza*, 88 S.W.3d 353, 354 (Tex. App.—San Antonio 2002, no pet.) (per curiam); *Palacios*, 968 S.W.2d at 468; *Sanchez*, 764 S.W.2d at 921.

By failing to file a brief or respond to our notice, the State, by and through its prosecuting attorney, has abandoned this appeal. *See Palacios*, 968 S.W.2d at 468; *Sanchez*, 764 S.W.2d at 921. Accordingly, this appeal is dismissed for want of prosecution.

Scott K. Field, Justice

Before Justices Puryear, Pemberton, and Field

Dismissed for Want of Prosecution

Filed: October 17, 2014

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