

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00511-CR

Derek Nathaniel Brooks, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF BELL COUNTY, 426TH JUDICIAL DISTRICT
NO. 69,853, HONORABLE FANCY H. JEZEK, JUDGE PRESIDING**

ORDER AND MEMORANDUM OPINION

PER CURIAM

Appointed trial counsel for appellant Derek Nathaniel Brooks has filed with this Court a motion to withdraw as counsel. In the motion, counsel represents that Brooks is indigent and unable to afford counsel and requests that this Court appoint an attorney to represent Brooks on appeal.

Brooks, if indigent, is entitled to the appointment of counsel on appeal.¹ However, only the trial court has the authority to grant counsel's motion to withdraw and appoint new counsel under such circumstances.² Accordingly, we dismiss counsel's motion to withdraw, abate the appeal, and remand the cause to the district court to hold a hearing in accordance with rule 38.8 of the

¹ See *Douglas v. California*, 372 U.S. 353, 355-58 (1963); *Cooks v. State*, 240 S.W.3d 906, 910 (Tex. Crim. App. 2007).

² See Tex. Code Crim. Proc. arts. 1.051, 26.04.

rules of appellate procedure.³ Upon remand, counsel is instructed to re-file his motion to withdraw with the district court. If Brooks is indigent, the district court shall make appropriate orders to ensure that he is adequately represented on appeal.⁴ Following the hearing, the district court shall order the appropriate supplemental clerk's and reporter's records to be prepared and forwarded to this Court no later than October 24, 2016.

It is ordered on September 22, 2016.

Before Justices Puryear, Pemberton, and Field

Abated and Remanded

Filed: September 22, 2016

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³ See Tex. R. App. P. 38.8(b)(2), (3).

⁴ See *id.*