

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00489-CR

Jack Hamilton Carr, Appellant

v.

State of Texas, Appellee

**FROM THE COUNTY COURT AT LAW NO. 1 OF HAYS COUNTY
NO. 100080, HONORABLE ROBERT UPDEGROVE, JUDGE PRESIDING**

MEMORANDUM OPINION

After a jury trial, Jack Hamilton Carr was convicted of the offense of driving while license invalid and sentenced to two days in the county jail and a \$750 fine. Carr had appointed counsel who was allowed to withdraw after trial. Carr's brief was originally due March 18, 2016, but no brief was filed. This Court abated the appeal and directed the trial court to conduct a hearing to determine whether Carr desired to prosecute this appeal, whether he is indigent, and whether he should have counsel appointed for him on appeal. *See* Tex. R. App. P. 38.8(b)(2).

The trial court notified us that Carr is not indigent, that Carr has not returned to court to discuss this matter, and that Carr's former counsel stated that Carr did not want to proceed with this appeal. Under the circumstances, we have considered the appeal without briefs and reviewed the record for unassigned fundamental error. *See* Tex. R. App. P. 38.8(b)(4) (authorizing appellate court in certain circumstances to "consider the appeal without briefs, as justice may require"); Tex.

Code Crim. Proc. art. 44.33(b) (providing that appellant’s failure to file brief shall not authorize dismissal of appeal); *Lott v. State*, 874 S.W.2d 687, 688 (Tex. Crim. App. 1994) (considering appeal without briefs when appellant was not indigent and affirming judgment after finding “no unassigned fundamental error” in record); *Ates v. State*, No. 03-15-00307-CR, 2016 Tex. App. LEXIS 6035, at *5 (Tex. App.—Austin June 8, 2016, no pet.) (mem. op., not designated for publication) (considering appeal on record alone when appellant was not entitled to appointed counsel); *Mosqueda v. State*, No. 03-12-00653-CR, 2013 Tex. App. LEXIS 7979, at *1-2 (Tex. App.—Austin June 28, 2013, no pet.) (mem. op., not designated for publication) (reviewing record for unassigned fundamental error when appellant could not be located and counsel had sought to abandon appeal). Finding no such fundamental error, we affirm the trial court’s judgment.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Field and Bourland

Affirmed

Filed: January 27, 2017

Do Not Publish