

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-16-00273-CR**

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**Devin Chase Culberson, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE COUNTY COURT AT LAW NO. 3 OF TRAVIS COUNTY  
NO. C-1-CR-13-212266, HONORABLE JOHN LIPSCOMBE, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

A jury convicted appellant Devin Culberson of the misdemeanor offense of assault causing bodily injury. *See* Tex. Penal Code § 22.01(a), (b). The trial court assessed punishment at one year imprisonment and a \$4,000 fine, but suspended imposition of the sentence and placed Culberson on community supervision for one year. Culberson timely filed his notice of appeal. *See* Tex. R. App. P. 26.2.

Culberson's brief was due on September 28, 2016, but was not received. In addition, Culberson did not respond to this Court's notice that his brief was overdue. From the record, it appeared that after Culberson filed his notice of appeal, the trial court allowed trial counsel to withdraw without substituting counsel. Consequently, we abated the appeal and asked that the trial court conduct a hearing to determine whether Culberson desires to prosecute this appeal, whether he is indigent, and, if so, whether counsel should be appointed to represent him in this appeal. *See* Tex. R. App. P. 38.8(b)(2), (3).

On April 20, 2017, the trial court held the requested hearing, and a reporter's record from the hearing was filed in this Court as a supplemental record. At the hearing, the trial court read a letter to the court from Culberson's trial counsel, and the letter was admitted as an exhibit. In the letter, Culberson's trial counsel explained that, as a courtesy to the court, he had informed Culberson about the scheduled hearing and had given Culberson the trial court contact information. On April 27, 2017, the trial court judge received an e-mail from Culberson. In his e-mail, which was also admitted as an exhibit, Culberson informed the trial court that he had decided not to continue with his appeal. At the conclusion of the hearing, the trial court found that Culberson had voluntarily given up his right to appeal.

Under these circumstances, we may consider the appeal without briefs pursuant to rule 38.8(b)(4). *See* Tex. R. App. P. 38.8(b)(4) (when no appellant's brief is filed and the trial court determines that appellant no longer wishes to prosecute appeal, "appellate court may consider the appeals without briefs, as justice may require"). We have reviewed the clerk's record and the reporter's record and find no reversible error. The trial court's judgment of conviction is affirmed.

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Scott K. Field, Justice

Before Chief Justice Rose, Justices Field and Bourland

Affirmed

Filed: June 27, 2017

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