

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00347-CR

Steven Arvin Turner, Appellant

v.

The State of Texas, Appellee

**FROM THE COUNTY COURT AT LAW NO. 7 OF TRAVIS COUNTY,
NO. C-1-CR-12-216032, HONORABLE ELISABETH ASHLEA EARLE, JUDGE PRESIDING**

MEMORANDUM OPINION

A jury convicted appellant Steven Arvin Turner of driving while intoxicated, *see* Tex. Penal Code § 49.04(a), and the trial court assessed his punishment at confinement for 100 days in the county jail, *see id.* §§ 12.21, 49.04(d). Appellant filed a pro se notice of appeal.¹

Appellant's brief was originally due on September 15, 2016, but no brief was filed. This Court's clerk sent a notice to appellant informing him that his brief was overdue. Appellant did not respond to the notice. Accordingly, this Court abated the appeal and directed the trial court to conduct a hearing to determine whether appellant desired to prosecute this appeal, whether he is indigent, and, if so, whether he should have counsel appointed for him on appeal. *See* Tex. R. App. P. 38.8(b)(2), (3). The trial court notified us that appellant failed to appear for that hearing. We

¹ Appellant had appointed counsel at trial who was allowed to withdraw after trial. Appellant did not request appointed counsel for appeal.

reinstated the appeal and notified appellant that his brief was due on February 28, 2017. We advised appellant that the failure to file a brief would result in consideration of the appeal on the record alone. No brief was filed.

Rule 38.8 of the Texas Rules of Appellate Procedure provides that under appropriate circumstances, “the appellate court may consider the appeal without briefs, as justice may require.” Tex. R. App. P. 38.8(b)(4); *see Lott v. State*, 874 S.W.2d 687, 688 (Tex. Crim. App. 1994) (affirming conviction on record alone where appellant failed to file a pro se brief after being properly admonished). Appellant has chosen not to file a brief on his behalf in this appeal. We therefore submitted the case without the benefit of briefs and, in the interest of justice, reviewed the entire record brought forth in this appeal. We find no reversible error. Accordingly, the trial court’s judgment of conviction is affirmed.

Melissa Goodwin, Justice

Before Justices Puryear, Pemberton, and Goodwin

Affirmed

Filed: April 11, 2017

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