

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

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**NO. 03-17-00322-CR**

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**Roderick Payton, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE 147TH DISTRICT COURT OF TRAVIS COUNTY  
NO. D-1-DC-16-301681, THE HONORABLE CLIFFORD A. BROWN, JUDGE PRESIDING**

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**ORDER AND MEMORANDUM OPINION**

**PER CURIAM**

Appellant's brief was originally due August 11, 2017. After this Court granted multiple motions requesting an extension of time to file his brief, the Court ordered appellant to file his brief by November 27, 2017. In our order, we advised counsel that no further extensions would be granted and that failure to comply with the order would result in the referral of the case to the trial court for a hearing under Rule 38.8(b) of the Texas Rules of Appellate Procedure. To date, the brief has not been tendered for filing and is overdue.

The appeal is abated and remanded to the trial court. The trial court shall conduct a hearing to determine whether appellant desires to prosecute this appeal and, if so, whether counsel has abandoned this appeal. *See* Tex. R. App. P. 38.8(b)(2), (3). The court shall make appropriate written findings and recommendations. *See* Tex. R. App. P. 38.8(b)(2), (3). If necessary, the court shall appoint substitute counsel who will effectively represent appellant in this appeal. Following the hearing, which shall be transcribed, the trial court shall order the

appropriate supplemental clerk's and reporter's records—including all findings and orders—to be prepared and forwarded to this Court no later than January 19, 2018. *See* Tex. R. App. P. 38.8(b)(3).

It is so ordered December 13, 2017.

Before Justices Puryear, Field, and Bourland

Abated and Remanded

Filed: December 13, 2017

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