

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

**NO. 03-17-00647-CR
NO. 03-17-00648-CR
NO. 03-17-00649-CR
NO. 03-17-00650-CR**

Ricardo Reyes, Appellant

v.

The State of Texas, Appellee

**FROM THE 427TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY
NOS. D-1-DC-16-206105; D-1-DC-16-206106; D-1-DC-17-900118; & D-1-DC-17-900119
HONORABLE WILFORD FLOWERS, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Ricardo Reyes was charged with possession of a controlled substance (cause number D-1-DC-16-206105), unlawful possession of a firearm (cause number D-1-DC-16-206106), evading arrest (cause number D-1-DC-17-900118), and deadly conduct (cause number D-1-DC-17-900119). The possession charge was dismissed, and Reyes was convicted of the remaining charges. On September 28, 2017, the trial court granted defense counsel's motion to withdraw. On October 2, 2017, Reyes filed a pro se notice of appeal as to all four cause numbers.¹ On October 16, 2017, Reyes filed a letter with the trial-court clerk stating that he "would like to waive [his] notice of appeal" as to all four cause numbers.

¹ The notice of appeal included, we assume by error, cause number D-1-DC-16-206105, which the trial court had previously dismissed upon the State's request.

Texas Rule of Appellate Procedure 42.2(a) requires motions to dismiss in criminal cases to be filed in the appellate court. *See* Tex. R. App. P. 42.2(a). However, Reyes's motion² is in writing and signed by Reyes as the rule requires. *See id.* Furthermore, the motion is included in the clerk's record, which is certified as true and correct by the Travis County District Clerk. We thus conclude that good cause exists to suspend the operation of Rule 42.2(a) in the above-cited cause numbers as to the requirement that a motion to dismiss be filed with the appellate-court clerk. *See* Tex. R. App. P. 2; *see also Garcia v. State*, No. 01-02-01218-CR, 2003 WL 321549, at *1 (Tex. App.—Houston [1st Dist.] Feb. 13, 2003, no pet.) (not designated for publication) (suspending requirement for motion to dismiss to be filed in appellate court and dismissing appeal because appellant filed a written, signed motion to dismiss in trial court). Accordingly, we grant Reyes's motion and dismiss the appeals. *See* Tex. R. App. P. 43.2(f). Any pending motions are denied as moot. The Clerk of this Court is directed to issue mandate immediately. *See id.* R. 18.1.

² Reyes requested dismissal of his appeal in a letter addressed to the Travis County district clerk rather than by filing a traditional motion to dismiss. Based on its substance, however, we construe his letter as a motion to dismiss his appeal. *See Surgitek, Bristol-Myers Corp. v. Abel*, 997 S.W.2d 598, 601 (Tex.1999) (courts look to substance of pleading rather than its caption or form to determine its nature); *Bunton v. State*, No. 03-16-00066-CR, 2016 WL 1084278, at *1 (Tex. App.—Austin Mar. 16, 2016) (mem. op., not designated for publication) (construing appellant's letter to court as motion to dismiss appeal).

Cindy Olson Bourland, Justice

Before Justices Puryear, Field, and Bourland

Dismissed on Appellant's Motion

Filed: December 21, 2017

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