Fourth Court of Appeals
San Antonio, Texas

January 7, 2014

No. 04-13-00715-CR, 04-13-00716-CR, 04-13-00717-CR, 04-13-00718-CR

Ex Parte Rogelio **RINCON**, Jr.,
Appellant

From the 379th Judicial District Court, Bexar County, Texas
Trial Court No. 2012CR2442, 2012CR2443, 2012CR2444, 2012CR2445
Mr. Andrew Wyatt Carruthers, Judge Presiding

O R D E R

Appellant's brief was due on December 2, 2013. After no brief of motion for extension of time to file the brief was filed, on December 9, 2013, we notified attorney James V. Tocci that the brief was late and ordered him to file a response within ten days. We warned Appellant that if no brief or motion was filed by that date, we would abate this appeal to the trial court for an abandonment hearing. *See* TEX. R. APP. P. 38.8(b)(2). We also cautioned Appellant's attorney that, to protect Appellant's rights, this court may "initiat[e] contempt proceedings against [A]ppellant's counsel." *Id.* R. 38.8(b)(4).

As of the date of this order, Appellant has not filed a response to our December 9, 2013 order. Therefore, we ABATE this appeal and REMAND the cause to the trial court. *See* TEX. R. APP. P. 38.8(b); *Samaniego v. State*, 952 S.W.2d 50, 52–53 (Tex. App.—San Antonio 1997, no pet.). We ORDER the trial court to conduct a hearing to answer the following questions:

(1) Does Appellant desire to prosecute his appeal?

(2) Is Appellant indigent? If Appellant is indigent, the trial court shall take such measures as may be necessary to assure the effective assistance of counsel, which may include the appointment of new counsel.

(3) Has appointed or retained counsel abandoned the appeal? Because sanctions may be necessary, the trial court should address this issue even if new counsel is retained or substituted before the date of the hearing. *See* TEX. R. APP. P. 38.8(b)(4).

The trial court may, in its discretion, receive evidence on the first two questions by sworn affidavit from Appellant. The trial court shall order Appellant's counsel to be present at the hearing. *See id.* R. 38.8(b)(3).

The trial court is further ORDERED to file supplemental clerk's and reporter's records in this court, not later than THIRTY DAYS from the date of this order, which shall include the following: (1) a transcript of the hearing and copies of any documentary evidence admitted, (2) written findings of fact and conclusions of law, and (3) recommendations addressing the questions listed above. *See id.*

All other appellate deadlines are SUSPENDED pending further order of this court.

Patricia O. Alvarez, Justice

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 7th day of January, 2014.

Keith E. Hottle
Clerk of Court

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STATE OF TEXAS