Fourth Court of Appeals
San Antonio, Texas

December 5, 2014

No. 04-14-00246-CR

Destyn David **FREDERICK**,
Appellant

v.

THE STATE OF TEXAS,
Appellee

From the 81st Judicial District Court, La Salle County, Texas
Trial Court No. 11-09-00041-CRL
Honorable Donna S. Rayes, Judge Presiding

O R D E R

Appellant's brief was originally due **July 16, 2014, almost six months ago.** When appellant's brief was not filed, the Clerk of this Court sent appellant's court-appointed attorney, Mr. Edward Shaughnessy, a letter, informing him that appellant's brief was late. When Mr. Shaughnessy failed to respond to this letter, we ordered Mr. Shaughnessy to file appellant's brief on or before August 21, 2014. Instead of filing appellant's brief, on August 18, 2014, Mr. Shaughnessy filed a motion for extension of time to file appellant's brief. On August 26, 2014, we granted appellant's extension and ordered Mr. Shaughnessy to file appellant's brief on or before September 22, 2014. We warned that no further extensions of time would be granted. Mr. Shaughnessy still did not file appellant's brief but instead filed yet another motion for extension of time, requesting an additional thirty days. We denied appellant's motion for extension of time to file his brief, abated this cause, and ordered the trial court to conduct an abandonment hearing.

The trial court's written findings with regard to that hearing have yet to be filed. However, a supplemental reporter's record of the hearing has been filed. The supplemental reporter's record reflects that the trial found that (1) appellant does desire to prosecute his appeal; (2) appellant is indigent; and (3) Mr. Shaughnessy, appointed counsel, has not abandoned the appeal.

Since the date of that hearing, which was held on November 5, 2014, appellant has filed a pro se letter with this Court. In his letter, which was dated November 17, 2014, appellant states that Mr. Shaughnessy "has not had any communication with" either him or his family. Appellant states that he has "tried to contact [Mr. Shaughnessy] numerous times." Appellant criticizes Mr. Shaughnessy for not filing anything "in [his] defense" and for missing "several deadlines for [his] brief." Appellant states that Mr. Shaughnessy has not answered his letters or returned phone calls from his family. According to Appellant, to determine the status of his appeal, he has had to rely on his family looking for the status online. Appellant also claims that Mr. Shaughnessy represents one of his co-defendants. Appellant argues he is being deprived of effective assistance of counsel.

Given the missed deadlines in this appeal and the allegations contained in Appellant's letter, we ORDER the trial court to conduct a hearing to determine whether appellant is receiving effective assistance of counsel and whether the appointment of new counsel is needed. We ORDER the trial court to assure that appellant is present in person for the hearing.

We ORDER the trial court to file its written findings of fact and conclusions of law with the trial court clerk no later than thirty days from the date of this order. We ORDER the trial court clerk to file a supplemental clerk's record in this court no later than ten days after the trial court files its findings of facts and conclusions of law. We further ORDER the court reporter to file in this court a supplemental reporter's record of the hearing, along with copies of any documentary evidence admitted, no later than twenty days after the date of the hearing.

All appellate deadlines remain ABATED pending further orders from this court.

Karen Angelini

Karen Angelini, Justice

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 5th day of December, 2014.

Keith E. Hottle

Keith E. Hottle
Clerk of Court

