

Affirmed and Opinion filed March 23, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00753-CR

BILLY JOE COVINGTON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Court at Law No. 2
Brazoria County, Texas
Trial Court Cause No. 92,596G**

O P I N I O N

After a jury trial, appellant was convicted of the misdemeanor offense of failure to stop and give information. The trial court sentenced appellant to 180 days in jail on June 5, 1998.

The reporter's record has not been filed in this appeal. The court reporter informed this court that appellant had not paid or made arrangements to pay the reporter's fee to prepare the reporter's record. *See* TEX. R. APP. P. 37.3(c)(2)(A). Because we were unaware whether appellant was entitled to proceed without payment of costs, *see* TEX. R. APP. P. 37.3(c)(2)(B), on August 19, 1999, we ordered the trial court to conduct a hearing to

determine whether appellant desired to prosecute his appeal, and, if so, whether he was indigent and entitled to a free record. A record of that hearing was filed with this court on October 8, 1999. The record reflects that neither the State nor appellant appeared at the hearing.

Because the Texas Rules of Appellate Procedure do not provide a mechanism to dismiss an appeal of a criminal case for want of prosecution, we issued a second order on December 16, 1999, again asking the trial court to hold the requisite hearing and make findings. The record of that hearing was filed in this court on March 13, 2000. Again, neither the State nor appellant appeared at the hearing.

While the trial court did not make explicit findings concerning appellant's indigence or his desire to pursue his appeal, we find, based on appellant's failure to appear at either hearing, that the trial court has implicitly determined that appellant no longer desires to prosecute his appeal.

On the basis of that implicit finding, this court has considered the appeal without the reporter's record or briefs. *See* TEX. R. APP. P. 38.8(b). We find no fundamental error.

Accordingly, the judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed March 23, 2000.

Panel consists of Justices Amidei, Anderson, and Frost.

Do not publish - TEX. R. APP. P. 47.3(b).