Affirmed and Opinion filed August 10, 2000.

In The

Fourteenth Court of Appeals

———————————

NO. 14-99-00628-CR

———————————

RALPH BASIL GARCIA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 763,555

O P I N I O N

After a jury trial, appellant was convicted of the offense of theft and sentenced to one year in a state jail facility on April 28, 1999.

Appellant is not represented by counsel. No reporter's record has been filed in this case. Cheryl Pierce, the substitute court reporter for the 232nd District Court, informed this Court that appellant had not made arrangements for payment for the balance due on the reporter's record. On December 16, 1999, the clerk of this court notified appellant that we would consider and decide those issues that do not require a reporter's record unless appellant,

within 15 days of notice, provided this court with proof of payment for the record. *See* TEX. R. APP. P. 37.3(c). Appellant filed no reply.

Accordingly, on January 13, 2000, we ordered the judge of the 232nd District Court to immediately conduct a hearing to determine whether appellant desired to prosecute his appeal, and, if so, whether appellant was indigent and, thus entitled to a free record. A record of that hearing was filed with this Court on February 7, 2000. At the hearing, the trial court found that appellant wished to continue his appeal and he is not indigent. Appellant informed the court that he would hire counsel and pay the balance due for the record. This Court heard nothing further from appellant or any counsel representing appellant. No reporter's record has been filed.

Therefore, on March 30, 2000, we ordered appellant to file a brief in this appeal on or before May 1, 2000. No brief was filed. On May 1, 2000, this Court received a letter from Cheryl Pierce stating that appellant had not made arrangements for payment for the record. On May 5, 2000, and on May 23, 2000, appellant and the trial were notified that appellant's brief was past due. No satisfactory response was received. To date, this Court has heard nothing further from appellant or any counsel representing appellant.

More than one year has now passed since appellant was sentenced, and no appellate brief has been filed. This court has been very lenient with the appellant, recognizing he is at a disadvantage representing himself. Although the appellant has had ample time in which to prepare his brief or obtain retained counsel, he has failed to do so. This court has now reached the inescapable conclusion that the appellant will not file a meaningful brief in this appeal.

Rule 38.8 provides that we will not dismiss or consider the appeal without briefs unless it is shown the appellant no longer desires to prosecute his appeal or that he is not indigent and has failed to make necessary arrangements for filing a brief. *See* TEX. R. APP. P. 38.8. It is clear that the rule was designed to protect an indigent appellant from the failure of his appointed counsel to provide a brief. A hearing has already been held to determine whether

appellant is indigent, and he conceded that he is not. Because the trial court has already held one hearing to make the findings required under Rule 38.8, and we can find nothing in the rules or case law which requires this court to once again send this matter back to the trial court, we decline to do so.

Therefore, on June 15, 2000, we ordered appellant to file a brief in this appeal on or before July 7, 2000. In that order, we warned that if appellant failed to file his brief, we would decide this appeal upon the record before the Court. *See Lott v. State*, 874 S.W.2d 687, 688 (Tex. Crim. App. 1994) (affirming conviction on record alone where appellant failed to file a pro se brief after being properly admonished); *Coleman v. State*, 774 S.W.2d 736, 738-39 (Tex. App.–Houston [14th Dist.] 1989, no pet.) (holding that former rule 74(*l*)(2) (now Rule 38.8(b)) permitted an appeal to be considered without briefs "as justice may require" when a pro se appellant has not complied with the rules of appellate procedure).

To date, no brief or motion for extension of time has been filed. On the basis of the trial court's findings and our previous orders, this Court has considered the appeal without 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

Opinion and judgment filed August 10, 2000.
Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.
Do not publish — TEX. R. APP. P. 47.3(b).