

Affirmed and Opinion filed October 21, 1999.



In The

Fourteenth Court of Appeals

NO. 14-98-00613-CR

NO. 14-98-00617-CR

REGINALD LAMONT BISHOP, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 762,314 & 775,427**

MEMORANDUM OPINION

Appellant Reginald Lamont Bishop (Bishop) was charged in two separate indictments with aggravated robbery. After accepting his guilty plea, the trial judge assessed his punishment at fifty years confinement in Texas Department of Criminal Justice, Institutional Division for each offense. In three points of error, Bishop alleges the trial court violated his United States and Texas constitutional rights by failing to appoint counsel at a critical stage of the proceedings. Because the record is devoid of evidence that Bishop was unrepresented, we affirm the judgment of the trial court.

I.
Factual Background

In 1994, the trial judge deferred adjudication for Bishop's possession of a controlled substance and placed him on community supervision. The judge later extended Bishop's community supervision after finding Bishop violated the conditions of his supervision by continuing to use narcotics. Finally, the state filed a motion to adjudicate guilt based on evidence that Bishop used a loaded shotgun to rob two people while on supervision. At the presentence investigation hearing, Bishop admitted he continues to have a drug problem, sells crack cocaine to support his own drug habit, and robbed both of the complainants in order to buy more drugs.

Bishop was represented by counsel at the hearing and, after judgment was pronounced, filed a pro se notice of appeal. Thirty-four days after judgment, Bishop filed a Pauper's Oath requesting appointment of counsel on appeal and a transcript. The trial judge appointed counsel the same day. Bishop alleges he requested counsel on May 27th, the same day judgment was pronounced. However, the record does not support this assertion. The date stamped on the judgment and the pro se Notice of Appeal is May 27th. The date stamped on the Pauper's Oath is July 1st. Therefore, the record demonstrates Bishop requested appointment of counsel for appeal, and counsel was appointed, thirty-four days after judgment was pronounced.

II.
Analysis

In his three points of error, Bishop argues the trial court violated his constitutional rights by failing to appoint counsel before thirty days post judgment expired. This failure, he alleges, violated his rights because while he was unrepresented, he lost the ability to file a timely motion for new trial. He further alleges this Court erred by denying his motion to abate appeal to file an out of time motion for new trial. We will combine Bishop's points of error in our analysis.

First, the record does not support Bishop's assertion that he was unrepresented post judgment. Although Bishop filed a pro se Notice of Appeal, it is common for defendants to file pro se motions while still represented by counsel. *See Burnett v. State*, 959 S.W.2d 652, 659 (Tex.App.—Houston [1st Dist.] 1997, pet. ref'd). In fact, in a similar case, the Texas Court of Criminal Appeals recently held that filing a pro se Notice of Appeal is evidence that the defendant has been informed of at least some appellate rights. *See Oldham v. State*, 977 S.W.2d 354, 363 (Tex.Crim.App. 1998).

Second, a presumption exists that the trial attorney continued to represent Bishop at all times until appellate counsel was appointed. *See id.* There is no evidence in the record, other than the pro se Notice of Appeal, to rebut this presumption. Although Bishop attached to his brief two affidavits from his trial counsel and himself stating he was unrepresented, these affidavits are not included in the record. We cannot consider documents attached to briefs, unless they were before the trial court and are part of the record. *See Allen v. Automobile Ins. Co. of Hartford Conn.*, 892 S.W.2d 198, 200 (Tex.App.—Houston [14th Dist.] 1994, no writ); *see also Russell v. City of Bryan*, 919 S.W.2d 698, 706 (Tex.App.—Houston [14th Dist.] 1996, writ denied) (holding burden is on appellants to demonstrate that record supports their contentions and to make accurate references to record to support their complaints on appeal). Because the record lacks evidence supporting appellant's assertions, we overrule Bishop's three points of error. *See* TEX. R. APP. P. 38.1(h) (Appellant's brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record).

We affirm the judgment of the trial court.

John S. Anderson
Justice

Judgment rendered and Opinion filed October 21, 1999.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

Do Not Publish — TEX. R. APP. P. 47.3(b).