Affirmed and Opinion filed November 8, 2001.

In The

Fourteenth Court of Appeals

NO. 14-01-00168-CR

RONIE EDWARD PATTERSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 832,412

M E M O R A N D U M O P I N I O N

After a jury trial, appellant was convicted of the offense of possession of a controlled substance, namely cocaine, and sentenced to 270 days in the State Jail Division of the Texas Department of Criminal Justice on December 21, 2000.

Appellant is not represented by counsel on appeal. On May 3, 200, this court ordered a hearing to determine whether appellant was entitled to proceed without payments of costs because the reporter's record had not been filed and the court reporter informed this court that appellant had not paid or made arrangements to pay for the record. The trial court conducted the hearing. The record of the hearing was filed in this court on May 22, 2001.

At the hearing, the trial court informed appellant that he would be required to "fill out the papers that are provided to you and then the Court will determine whether or not you are indigent." Appellant was instructed to file the papers with the trial court clerk. The trial court made no finding of whether appellant desired to pursue his appeal or of his indigency status.

On May 24, 2001, we again ordered the trial court to conduct a hearing. That order required the trial court to conduct a hearing to determine whether appellant desires to prosecute his appeal, and, if so, whether appellant is indigent and thus entitled to a free record. The record of the hearing and findings of fact and conclusions of law were filed in this court on June 6, 2001. In its findings, the trial court found appellant desired to continue his appeal, but appellant is not indigent and not entitled to a free record.

On June 18, 2001, appellant filed a motion in this court asking for an extension of time to pay for the reporter's record. On June 28, 2001, we granted the motion and ordered appellant to pay or make acceptable arrangements to pay for the reporter's record on or before July 27, 2001. We further stated that if appellant did not pay or make acceptable arrangements to pay for the reporter's record on or before July 27, 2001, and provide this Court with proof thereof, his brief would be due on or before August 27, 2001, and the court would decide those issues not requiring a reporter's record.

Appellant did not pay or make arrangements to pay for the reporter's record on or before July 27, 2001. Accordingly, his brief was due on or before August 27, 2001. Appellant, however, did not filed his brief by August 27, 2001. Instead, appellant filed a motion to extend time to file his brief asking this court for an additional twelve months to "accumulate the fee that the court reporter demands that I pay her." On September 20, 2001, we denied appellant's motion and issued an order requiring appellant to "***file his brief on or before October 19, 2001, without benefit of the reporter's record.***" (emphasis in the original). We noted in the order that no further extensions of time to file the brief would be considered absent exceptional circumstances and that appellant's inability to pay for the reporter's record would not be considered an exceptional circumstance.

Appellant did not file his brief by October 19, 2001.

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. It is clear that the rule was designed to protect an indigent appellant from the failure of his appointed counsel to provide a brief. The rule further provides that under appropriate circumstances, "the appellate court may consider the appeal without briefs, as justice may require." TEX. R. APP. P. 38.8 (b)(4).

Hearings have already been held as required under Rule 38.8. Because the trial court has already held hearings 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.

Appellant has not complied with our order of September 20, 2001. While we believe that no accused should be denied his right of appeal, we also believe that "justice requires" that the exercise of this right of appeal must be held within the framework of the rules of appellate procedure. *See 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). We also believe that requiring any appellant to follow the rules does not infringe upon his rights of appeal. *See id.* We therefore find that justice requires that this appeal be determined without a brief.

This court has reviewed the entire record brought forth in this appeal and we find no reversible error. Accordingly, the judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed November 8, 2001.
Panel consists of Justices Yates, Edelman, and Wittig.
Do not publish - TEX. R. APP. P. 47.3(b).