



**COURT OF APPEALS FOR THE  
FIRST DISTRICT OF TEXAS AT HOUSTON**

**ORDER**

Appellate case name: Oscar Ramirez Martinez v. The State of Texas

Appellate case number: 01-19-00863-CR

Trial court case number: 1617262

Trial court: 178th District Court of Harris County

Appellant is appealing from a conviction for evading arrest with a vehicle. Appellant was represented in the trial court by retained counsel Charles David Thompson. On April 2, 2020, appellant's retained counsel filed a motion to withdraw, claiming he has not been paid to prepare the appeal and that, because he was advised that appellant had been deported, he was unable to obtain appellant's consent for a voluntary withdrawal. Appellant's brief was due on April 8, 2020.

An appellant who has filed a notice of appeal and made arrangements for the filing of the appellate record does not lose his right to appeal solely because he has been deported. *See Alakhras v. State*, 73 S.W.3d 434, 435 (Tex. App.—Houston [1st Dist.] 2002, no pet.). However, findings concerning whether he has effectively abandoned the appeal are necessary for this Court to move forward. *See Lagos v. State*, No. 03-10-00339-CR, 2011 WL 677395, at \*1 (Tex. App.—Austin Feb. 24, 2011, no pet.) (noting that trial court had granted counsel's motion to withdraw based on its determination that appellant had been deported and that contact with appellant was futile).

Accordingly, we abate the appeal and remand for the trial court to immediately conduct a hearing at which a representative of the Harris County District Attorney's Office and appellant's counsel, Charles David Thompson, shall be present. TEX. R. APP. 38.8(b)(2). Appellant shall also be present for the hearing in person or, if appellant is incarcerated, at the trial court's discretion, appellant may participate in the hearing by closed-circuit video teleconferencing.<sup>1</sup>

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<sup>1</sup> Any such teleconference must use a closed-circuit video teleconferencing system that provides for a simultaneous compressed full motion video and interactive communication of image and sound between the trial court, appellant, and any attorneys representing the State or appellant. On request of appellant, appellant and his counsel shall be able to communicate privately without being recorded or heard by the trial court or the attorney representing the State.

The trial court is directed to:

- (1) determine whether appellant still wishes to prosecute the appeal or if appellant has abandoned the appeal;
- (2) if appellant does wish to prosecute the appeal, determine whether good cause exists to permit retained counsel Charles David Thompson to withdraw as appellant's counsel;
  - a. if the trial court grants retained counsel Charles David Thompson's motion to withdraw, the trial court shall determine whether to appoint substitute appellate counsel at no expense to appellant;
  - b. if the trial court does not permit retained counsel Charles David Thompson to withdraw, the trial court shall provide a deadline by which retained counsel Charles David Thompson must file appellant's brief, which shall be no more than 30 days from the date of the hearing;
- (3) make any other findings and recommendations the trial court deems appropriate, including whether appellant has been deported; and
- (4) enter written findings of fact, conclusions of law, and recommendations as to these issues, separate and apart from any docket sheet notations.

*See* TEX. CODE CRIM. PROC. art. 1.051(a), (c), (d)(1), 26.04(j)(2); TEX. R. APP. P. 38.8(b).

The trial court shall have a court reporter record the hearing and file the reporter's record with this Court **within 30 days of the date of this order**. The trial court clerk is directed to file a supplemental clerk's record containing the trial court's findings and recommendations with this Court **within 30 days of the date of this order**. If the hearing is conducted by video teleconference, a certified video recording of the hearing shall also be filed in this Court **within 30 days of the date of this order**.

The appeal is abated, treated as a closed case, and removed from this Court's active docket. The appeal will be reinstated on this Court's active docket when the supplemental clerk's record and the reporter's record of the hearing are filed in this Court.

It is so ORDERED.

Judge's signature: /s/ Justice Richard Hightower  
 Acting individually     Acting for the Court

Date: July 7, 2020