

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 06-105

FINAL APPROVAL OF REVISIONS TO THE TEXAS RULES OF APPELLATE PROCEDURE

ORDERED that:

1. The Texas Rules of Appellate Procedure are amended as follows:

Rule 25.2 is amended without comments;

New Rule 48.4 is adopted;

Appendix: Certification of Defendant's Right of Appeal is amended.

2. These amendments, with any changes made after public comments are received, take effect September 1, 2007.

3. The Clerk is directed to file an original of this Final Order with the Secretary of State forthwith, and to cause a copy of this Final Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*.

SIGNED AND ENTERED this 20th day of August, 2007.

Sharon Keller, Presiding Judge

Lawrence E. Meyers, Judge

Tom Price, Judge

Paul Womack, Judge

Cheryl Johnson, Judge

Michael Keasler, Judge

Barbara Hervey, Judge

Charles Holcomb, Judge

Cathy Cochran, Judge

Rule 25.2. Criminal Cases.

(a) *Rights to Appeal.* [no change]

(b) *Perfection of Appeal.*[no change]

(c) *Form and Sufficiency of Notice.* [no change]

(d) *Certification of Defendant's Right of Appeal.* If the defendant is the appellant, the record must include the trial court's certification of the defendant's right of appeal under Rule 25.2(a)(2). The certification shall include a notice that the defendant has been informed of his rights concerning an appeal, as well as any right to file a *pro se* petition for discretionary review. This notification shall be signed by the defendant, with a copy given to him. The certification should be part of the record when notice is filed, but may be added by timely amendment or supplementation under this rule or Rule 34.5(c)(1) or Rule 37.1 or by order of the appellate court under Rule 34.5(c)(2). The appeal must be dismissed if a certification that shows the defendant has the right of appeal has not been made part of the record under these rules.

(e) *Clerk's Duties.* [no change]

(f) *Amending the Notice or Certification.* An amended notice of appeal or trial court's certification of the defendant's right of appeal correcting a defect or omission in an earlier filed notice or certification, including a defect in the notification of the defendant's appellate rights, may be filed in the appellate court in accordance with Rule 37.1, or at any time before the appealing party's brief is filed if the court of appeals has not used Rule 37.1. The amended notice or certification is subject to being struck for cause on the motion of any party affected by the amended notice or certification. After the appealing party's brief is filed, the notice or certification may be amended only on leave of the appellate court and on such terms as the court may prescribe.

(g) *Effect of Appeal.* [no change]

(h) Advice of Right of Appeal. When a court enters a judgment or other appealable order and the defendant has a right of appeal, the court (orally or in writing) shall advise the defendant of his right of appeal and of the requirements for timely filing a sufficient notice of appeal.

[New] Rule 48.4. Opinion Sent to Criminal Defendant

In criminal cases, the attorney representing the defendant on appeal shall, within five days after the opinion is handed down, send his client a copy of the opinion and judgment, along with notification of the defendant's right to file a *pro se* petition for discretionary review under Rule 68. This notification shall be sent certified mail, return receipt requested, to the defendant at his last known address. The attorney shall also send the court of appeals a letter certifying his compliance with this rule and attaching a copy of the return receipt within the time for filing a motion for rehearing. The court of appeals shall file this letter in its record of the appeal.

Appendix: Certification of Defendant's Right of Appeal

No. _____

The State of Texas

In the _____ Court

v.

of

Defendant

_____ County, Texas

TRIAL COURT'S CERTIFICATION OF DEFENDANT'S RIGHT OF APPEAL*

I, judge of the trial court, certify this criminal case:

is not a plea-bargain case, and the defendant has the right of appeal. [*or*]

is a plea-bargain case, but matters were raised by written motion filed and ruled on before trial and not withdrawn or waived, and the defendant has the right of appeal. [*or*]

is a plea-bargain case, but the trial court has given permission to appeal, and the defendant has the right of appeal. [*or*]

is a plea-bargain case, and the defendant has NO right of appeal. [*or*]

the defendant has waived the right of appeal.

Judge

Date Signed

I have received a copy of this certification. I have also been informed of my rights concerning any appeal of this criminal case, including any right to file a *pro se* petition for discretionary review pursuant to Rule 68 of the Texas Rules of Appellate Procedure. I have been admonished that my attorney must mail a copy of the court of appeals's judgment and opinion to my last known address and that I have only 30 days in which to file a *pro se* petition for discretionary review in the court of appeals. TEX. R. APP. P. 68.2 I acknowledge that, if I wish to appeal this case and if I am entitled to do so, it is my duty to inform my appellate attorney, by written communication, of any change in the address at which I am currently living or any change in my current prison unit. I understand that, because of appellate deadlines, if I fail to timely inform my appellate attorney of any change in my address, I may lose the opportunity to file a *pro se* petition for discretionary review.

Defendant (if not represented by counsel)
Mailing address:
Telephone number:
Fax number (if any):

Defendant's Counsel
State Bar of Texas ID number
Mailing address:
Telephone number:
Fax number (if any):

* "A defendant in a criminal case has the right of appeal under these rules. The trial court

shall enter a certification of the defendant's right to appeal in every case in which it enters a judgment of guilt or other appealable order. In a plea bargain case -- that is, a case in which a defendant's plea was guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant -- a defendant may appeal only: (A) those matters that were raised by written motion filed and ruled on before trial, or (B) after getting the trial court's permission to appeal." TEXAS RULE OF APPELLATE PROCEDURE 25.2(a)(2).