

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 11-006

APPROVAL OF REVISIONS TO THE TEXAS RULES OF APPELLATE PROCEDURE

ORDERED that:

1. The Texas Rules of Appellate Procedure, Rule 31.4(b)&(c) and Appendix: Certification of Defendant's Right of Appeal are amended.
2. These amendments take effect immediately.
3. The Clerk of the Court of Criminal Appeals is directed to file an original of this Order with the Secretary of State forthwith, and to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*.

SIGNED AND ENTERED October 17, 2011.

Sharon Keller

Sharon Keller, Presiding Judge

Lawrence E. Meyers

Lawrence E. Meyers, Judge

Tom Price

Tom Price, Judge

Paul Womack

Paul Womack, Judge

Cheryl Johnson

Cheryl Johnson, Judge

Michael Keasler

Michael Keasler, Judge

Barbara Hervey

Barbara Hervey, Judge

Cathy Cochran

Cathy Cochran, Judge

Elsa Alcalá

Elsa Alcalá, Judge

31.4. Stay of Mandate

(a) *When Motion for Stay Required.* Despite Rule 18 or any other of these rules, in the following circumstances a party who in good faith intends to seek discretionary review must — within 15 days after the court of appeals renders judgment — file with the court of appeals clerk a motion for stay of mandate, to which is appended the party's petition for discretionary review showing reasons why the Court of Criminal Appeals should review the appellate court judgment:

(1) when a court of appeals affirms the judgment of the trial court in an extradition matter and thereby sanctions a defendant's extradition; or

(2) when a court of appeals reverses the trial court's judgment in a bail matter — including bail pending appeal under Code of Criminal Procedure article 44.04(g) — and thereby grants or reduces the amount of bail.

(b) *Determination of the Motion.* The clerk must promptly submit the motion and appendix to the court of appeals, or to one or more judges as the court deems appropriate, for immediate consideration and determination.

(1) If the motion for stay is granted, the clerk will ~~file the petition for discretionary review and process the case in accordance with Rule 68.7~~ immediately forward the petition for discretionary review to the clerk of the Court of Criminal Appeals.

(2) If the motion is denied, the clerk will issue a mandate in accordance with the court of appeals' judgment.

(c) *Denial of Stay.* If the motion for stay is denied under 31.4(b)(2), the losing party may then present the motion and appendix to the clerk of the Court of Criminal Appeals, who will promptly submit them to the Court, or to one or more judges as the Court deems appropriate, for immediate consideration and determination. The Court of Criminal Appeals may deny the motion or stay or recall the mandate. If the mandate is stayed or recalled, the clerk of the Court of Criminal Appeals ~~court of appeals clerk~~ will file the petition for discretionary review and process the case in accordance with Rule 68.7.

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 Criminal 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)