

Affirmed and Opinion filed September 9, 1999.



In The
Fourteenth Court of Appeals

NO. 14-98-01452-CR

MARIA LETICIA ORTEGA, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court at Law No. 8
Harris County, Texas
Trial Court Cause No. 98-34408**

OPINION

After a plea of no contest, appellant was convicted of the offense of engaging in entertainment at a sexually oriented business without a valid permit, and sentenced to two days in the Harris County Jail and a \$300.00 fine on November 5, 1998.

On April 23, 1999, appellant's counsel, Nelson T. Hensley, filed a motion to dismiss the appeal stating appellant did not wish to prosecute the appeal. Rule 42.2(a) of the Texas Rules of Appellate Procedure states that the court may dismiss an appeal upon withdrawal of the notice of appeal by appellant. *See* TEX. R. APP. P. 42.2(a). The rule provides,

however, that the motion to dismiss or withdrawal of the notice of appeal must be signed by *appellant* and appellant's counsel. *See id.* (emphasis added). The motion to dismiss filed by appellant's counsel was not signed by appellant. Accordingly, on August 12, 1999, this court ordered a hearing to determine whether appellant desires to prosecute her appeal. We also ordered the trial court to direct appellant's counsel to file a motion to withdraw the notice of appeal signed by appellant and counsel.

On August 19, 1999, the trial court conducted the hearing. The record of the hearing was filed in this court on September 2, 1999. At the hearing, appellant's counsel stated, under oath, that he filed the motion to dismiss at appellant's request. He prepared the motion and attempted to contact appellant to obtain her signature pursuant to rule 42.2(a). Counsel was unable to contact appellant despite attempts by phone and mail.

Based on the evidence presented at the hearing, the trial court found appellant no longer desires to prosecute her appeal. On the basis of that finding, this court has considered the appeal without briefs. *See* TEX. R. APP. P. 38.8(b). We find no fundamental error.

Accordingly, the judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed September 9, 1999.

Panel consists of Justices Amidei, Edelman, and Wittig.

Do not publish - TEX. R. APP. P. 47.3(b).