

Two grounds for rehearing are presented in the motion for rehearing. Both grounds for rehearing relate to the grounds for review originally presented in appellant's petition for discretionary review. In his first ground for review, appellant urged the court of appeals erred in finding no error with respect to various reputation questions asked of state's witnesses during the punishment phase. In his second ground for review, appellant urged the court of appeals erred in finding no error in allowing the state to make use of a diagram during trial because the diagram could not be seen by appellant.

In his first ground for rehearing, relating to the alleged erroneous reputation questions, appellant argues that refusal of his petition constitutes "accept[ance of] the reasoning and analysis of the court of appeals." Appellant is mistaken. As in every case, this Court's decision to refuse a petition for discretionary review should not be construed as approval by this Court of the language or reasoning used by the court of appeals in reaching a decision.

With this understanding, appellant's motion for rehearing is denied.



Johnny R. CRAWFORD, Appellant,

v.

The STATE of Texas, Appellee.

No. 1005-86.

Court of Criminal Appeals of Texas,
En Banc.

Dec. 9, 1987.

Defendant was convicted in the 289th District Court, Bexar County, Tom Rickhoff, J., of theft. Defendant then sought postconviction relief. The Court of Criminal Appeals granted application, permitted defendant to file out-of-time of appeal, and remanded case. After remand defendant

appealed. The Court of Appeals, 715 S.W. 2d 769, affirmed. Petition for discretionary review was granted. The Court of Criminal Appeals, W.C. Davis, J., held that trial court's delay in appointing counsel until after time limit for designating record for appeal deprived petitioner of effective assistance of counsel.

Remanded.

Criminal Law ¶641.12(1)

Trial court's delay in appointing counsel until after time limit for designating record for appeal deprived petitioner of effective assistance of counsel. U.S.C.A. Const.Amend. 6.

Mark Stevens (court appointed on appeal), San Antonio, for appellant.

Sam D. Millsap, Jr., Dist. Atty. & Charles Strauss & Charles Estee, Asst. Dist. Atty., San Antonio, Robert Huttash, State's Atty., Austin, for the State.

OPINION

W.C. DAVIS, Judge.

On October 23, 1983, the appellant was convicted of the offense of theft over \$200 and under \$10,000. After the jury found the appellant guilty the trial court assessed punishment at ten years. No direct appeals was taken immediately after conviction. However, on December 6, 1984, in an order filed under writ number 14,221-01, this Court granted the appellant's post conviction application and ordered that he be afforded an out-of-time appeal. The order stated that the appellant was to be "... return[ed] ... to the point at which he may give Notice of Appeals." The order specifically stated that appellant was to be given the assistance of counsel from the outset of his appeal.

Appellant's cause was remanded to the trial court in accordance with the order of December 6, 1984, and, on December 19, 1984, he filed written notice of appeal. On January 10, 1985, a date after the time limit for designating the record had passed,

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the trial court appointed counsel. As a result the Court of Appeals concluded that they were unable to extend the time to designate the record leaving the appellant without a complete transcription of the court reporter's notes. Thus, his attack of the sufficiency of the evidence was not reviewed. See *Crawford v. State*, 715 S.W.2d 769 (Tex.App.—San Antonio [4th Dist.], 1986).

Appellant has filed a Petition for Discretionary Review alleging, inter alia, that he has been denied the effective assistance of counsel due to the delay in appointing counsel. We agree. See *Ward v. State*, 740 S.W.2d 794 (Tex.Cr.App.1987).

Therefore, the cause is remanded to the Court of Appeals with instructions to abate the appeal to the trial court in order that a proper appeal, with counsel and record can be had.



Robert Byrne BROWN, Appellant,

v.

The STATE of Texas, Appellee.

No. 861-84.

Court of Criminal Appeals of Texas,
En Banc.

Dec. 9, 1987.

Defendant was convicted by jury in Criminal District Court No. 2, Dallas County, Don Metcalfe, J., of involuntary manslaughter, and he appealed. The Dallas Court of Appeals, Fifth Supreme Judicial District, Stephens, J., 674 S.W.2d 443, affirmed. On petition for discretionary review, the Court of Criminal Appeals, McCormick, J., held that evidence of supervision and probation revocation procedures, offered to mitigate punishment, was independent of defendant and his conduct and was therefore properly excluded at punishment stage of trial.

Affirmed.

Clinton, J., dissented and filed opinion in which Miller, J., joined.

Criminal Law ⇌986.2(1)

Evidence of supervision and probation revocation procedures, offered to mitigate punishment following involuntary manslaughter conviction, was independent of defendant and his conduct and was therefore properly excluded. V.T.C.A., Penal Code § 19.05; Vernon's Ann.Texas C.C.P. art. 37.07, § 3(a).

Daniel P. Garrigan, Lawrence B. Mitchell (on appeal only), Dallas, for appellant.

Henry Wade, Dist. Atty. and Michael A. Klein, Rider Scott and Robert Phillips, Asst. Dist. Attys., Dallas, Robert Huttash, State's Atty., Austin, for the State.

Before the court en banc.

OPINION ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

McCORMICK, Judge.

Appellant was tried and convicted before a jury in Dallas County for the crime of involuntary manslaughter. V.T.C.A., Penal Code, Section 19.05. Appellant's punishment was set by the jury at a term of ten years' confinement in the Texas Department of Corrections.

In his sole ground for review to this Court, appellant generally contends that "[t]he trial court committed error in overruling appellant's offer of the admission of relevant evidence at the punishment stage of the trial in violation of Tex.Code Crim. Proc. Ann. 37.07 (1965)." More particularly, appellant asserts that proffered testimony of the probation officer of the trial court relating to the operation of the probation department as well as the rules and regulations concerning the conduct of a probationer should have been admitted before the jury to establish the manner in which a probationer is supervised on the manner in which he may have his probation revoked.