

Appendix A

Rule 14.1(i)(i)—Appellate Opinion/Order

3d. CoA (Aug. 27, 2019) – Abated and Remanded;
“Certificate” – second deadline: Sept. 26, 2019.

**TEXAS COURT OF APPEALS,
THIRD DISTRICT, AT AUSTIN**

NO. 03-19-00339-CR

Wesley Eugene Perkins, Appellant

v.

The State of Texas, Appellee

**FROM THE COUNTY COURT AT LAW
NO. 2 [sic ¹] OF TRAVIS COUNTY
NO. C-1-CR-13-200882
THE HONORABLE JOHN LIPSCOMBE,
JUDGE PRESIDING**

**ORDER AND
MEMORANDUM OPINION**

PER CURIAM

Wesley Eugene Perkins, acting pro se, appeals the district [sic ²] court’s order revoking his community supervision (probation). However, trial court has not entered the necessary certification that Perkins has the right to appeal in this cause. *See* Tex. R. App. P. 25.2(a)(2) (requiring trial court to

¹ LIPSCOMBE is CCL3

² CCL3 is a *county* court.

enter certification of defendant's right of appeal "each time it enters a judgment of guilt or other appealable order"), (d) (requiring record to include trial court's certification of defendant's right of appeal).

Accordingly, we abate this appeal and remand the cause to the trial court for entry of a certification as to Perkins's right of appeal. *See id.* R. 25.2(a)(2); *Rodriguez v. State*, Nos. 03-17-00062-CR, 03-17-00063-CR, 2017 Tex. App. LEXIS 1206, at *1 (Tex. App.—Austin Feb. 14, 2017, no pet.) (mem. op., not designated for publication) (following similar procedure for trial court's entry of certification of defendant's right of appeal). A supplemental [1 2] clerk's record containing the trial court's certification shall be filed with this Court on or before September 26, 2019. *See Tex. R. App. P.* 25.2(d), 34.5(c)(2).

It is so ordered August 27, 2019.

Before Chief Justice Rose, Justices Triana and Smith
Abated and Remanded
Filed: August 27, 2019
Do Not Publish

Rule 14.1(i)(ii)—Additional Orders

3d.CoA.

“CERTIFICATE” – FIRST DEADLINE: 2019 JUL 19.

FILE COPY

[seal]

COURT OF APPEALS

THIRD DISTRICT OF TEXAS

P.O. BOX 12547, AUSTIN, TEXAS 78711-2547

www.txcourts.gov/3rdcoa.aspx

(512) 463-1733

JEFF L. ROSE, CHIEF JUSTICE JEFFREY D. KYLE, CLERK
MELISSA GOODWIN, JUSTICE
THOMAS J. BAKER, JUSTICE
GISELA D. TRIANA, JUSTICE
CHARI L. KELLY, JUSTICE
EDWARD SMITH, JUSTICE

July 9, 2019

The Honorable Dana DeBeauvoir
Criminal County Clerk
Travis County Courthouse
P. O. Box 149325
Austin, TX 78714
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 03-19-00339-CR
Trial Court Case Number: C-1-CR-13-200882

Style: Wes Perkins
 v. The State of Texas

Dear Ms. DeBeauvoir:

A supplemental clerk's record, containing the trial court's certification of defendant's right to appeal, is to be filed in this Court on or before July 19, 2019.

Very truly yours,

JEFFREY D. KYLE, CLERK

BY: Courtland Crocker

Courtland Crocker,

Deputy Clerk

cc The Honorable David A. Escamilla
Mr. Wesley Eugene Perkins

“CERTIFICATE” – THIRD DEADLINE: 2020 JAN 24.

FILE COPY

[seal]

COURT OF APPEALS

THIRD DISTRICT OF TEXAS

P.O. BOX 12547, AUSTIN, TEXAS 78711-2547

www.txcourts.gov/3rdcoa.aspx

(512) 463-1733

JEFF L. ROSE, CHIEF JUSTICE JEFFREY D. KYLE, CLERK
MELISSA GOODWIN, JUSTICE
THOMAS J. BAKER, JUSTICE
GISELA D. TRIANA, JUSTICE
CHARI L. KELLY, JUSTICE
EDWARD SMITH, JUSTICE

January 21, 2020

The Honorable Dana DeBeauvoir
Criminal County Clerk
Travis County Courthouse
P. O. Box 149325
Austin, TX 78714
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 03-19-00339-CR
Trial Court Case Number: C-1-CR-13-200882

Style: Wesley Eugene Perkins
v. The State of Texas

Dear Ms. DeBeauvoir:

A supplemental clerk's record, containing the trial court's certification of defendant's right to appeal, is to be filed in this Court on or before January 24, 2020.

Very truly yours,

JEFFREY D. KYLE, CLERK

BY: Courtland Crocker
Courtland Crocker,
Deputy Clerk

cc The Honorable David A. Escamilla
Mr. Wesley Eugene Perkins

CCA – Dec. 11, 2019 – Motion for leave to file
Mandamus denied.

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711
[Seal]

12/11/2019

**PERKINS, WESLEY EUGENE
Tr Ct. No. C-1-CR-13-200882
WR-88,116-03**

This is to advise that the Court has denied without written order motion for leave to file the original application for writ of mandamus.

Deana Williamson, Clerk

WESLEY EUGENE PERKINS
PO BOX 152766
AUSTIN, TX 78716-2766
* DELIVERED VIA E-MAIL *

CCL3 – May 6, 2019 – Probation revocation.

PO: Lundy Benesh/S4
CWM: Diana Lumbreiras

CAUSE NO. C1CR13200882

THE STATE OF TEXAS
VS.
WESLEY EUGENE
PERKINS
IN THE
COUNTY OF
TRAVIS CO.

ORDER REVOKING
COMMUNITY SUPERVISION

On this the 6th day of May, A.D. 2019, came on to be heard the matter of the Defendant's obedience to the terms and conditions of Community Supervision heretofore granted in the above styled and numbered cause; and came the County Attorney of Travis County, Texas, for the State of Texas, and came the Defendant in person and by his/her attorney; and the court having heard the evidence offered by both the State of Texas and the Defendant herein, and having considered the same finds:

That on the 17th day of April, 2017, the said

Wesley Eugene Perkins, was duly and legally convicted in this cause of the offense of Driving While Lic Invalid W/Prev Conv Or Susp and his/her punishment assessed at 45 days TCJ/\$2,000.

That the Defendant was qualified for Community Supervision under the Misdemeanor Community Supervision Act of the State; that under the provision of said Act, the Court placed the Defendant on Community Supervision for a period of 24 Months under the terms and conditions as set out in the Court Decree entered in said cause on April 17, 2017.

That thereafter, to-wit, on or about the 7th day of February A.D. 2019, and within a period of such Community Supervision, the Defendant Wesley Eugene Perkins, violated the terms and conditions of said Community Supervision in the following particulars, to wit:

Committed a subsequent offense in that on or about the 23rd day of January 2019, in the County of Travis, State of Texas, Wesley Eugene Perkins did then and there intentionally and knowingly drive and operate a motor vehicle upon the public highway there situate, when the Texas operator's license of the said Wesley Eugene Perkins was suspended.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED, that the Community Supervision heretofore granted to the Defendant in this cause be, and the same is hereby revoked; that the finding of guilty heretofore made in this cause be, and the same hereby is made final; that the court decree to made [sic] a final judgment with the exception that

the jail sentence shall be as hereinafter set forth. It is ordered that the Defendant Wesley Eugene Perkins, be confined in the Travis County Jail for 45 days TCJ CBT and that the State of Texas recover from said Defendant all costs accrued herein; that the Defendant be remanded to the custody of the Sheriff of Travis county, Texas until said term of imprisonment has expired and until any further accrued cost are herein. [sic]

Signed this 6th day of May, A.D. 2019.
Court costs concurrent
Fine paid to date

/s/ JL [?]
JUDGE, COUNTY COURT #3
TRAVIS COUNTY TEXAS

207

02/09

Rule 14.1(i)(iii)—Rehearing

None.

Technically, Motion to Reconsider *filed*. CCA doesn't do those for Mandamus.

Rule 14.1(i)(iv)—Judgment of Different Date

None.

Rule 14.1(i)(v)—Statute and Rules

TEX. CODE CRIM. PROC. art. 42A.755(e) (eff. Jan. 1, 2017). [See Petition]

[Included in the Petition.]

TEX. RS. APP. P. 25.2(a), (d).³

TEX. R. APP. P. 25.2(a).⁴

(a) *Rights to Appeal.*

- (1) Of the State. The State is entitled to appeal a court's order in a criminal case as provided by Code of Criminal Procedure article 44.01.
- (2) Of the Defendant. A defendant in a criminal case has the right of appeal under Code of Criminal Procedure article 44.02 and these

³ By Order dated Feb. 11, 2020, S.Ct.Tex. (Misc. Docket No. 20-9026) and CCA (Misc. Docket No. 20-004) have amended TEX. R. APP. P. 25.2(e), which isn't directly relevant, here.

⁴ Per S.Ct.Tex. (Misc. Docket No. 18-9149) (Nov. 5, 2018) and CCA (Misc. Docket No. 18-021) (Oct. 30, 2018).

rules. The trial court shall enter a certification of the defendant's right of appeal each time it enters a judgment of guilt or other appealable order other than an order appealable under Code of Criminal Procedure Chapter 64. 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,
- (B) after getting the trial court's permission to appeal, or
- (C) where the specific appeal is expressly authorized by statute.

TEX. R. APP. P. 25.2(d).

- (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.

TEX. R. APP. P. 25.2(h).

(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 requirement for timely filing a sufficient notice of appeal.

Rule 14.1(i)(vi)—Additional materials

In general, reference to the Record(s) will suffice.

The signed "Certificate."

Filed: 12/12/2019 5:23 PM ⁵

Dana DeBeauvoir
Travis County Clerk
C-1-CR-13-200882
Alan Windsor

NO. C1CR-13-200882

THE STATE OF TEXAS

VS.

Wesley Eugene Perkins

IN THE COUNTY COURT AT LAW

NUMBER 3

TRAVIS COUNTY, TEXAS

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

I, John Lipscombe, Judge of the above Trial
Court, certify this criminal case:

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

⁵ Filestamp of Perkins's Confirmation of Receipt
of the Certificate of the Right to Appeal Regarding
Probation Revocation.

____ 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.**

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

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

JL  the **defendant has waived the right of appeal.**

____ the notice of appeal was not timely filed, and the **defendant has NO right of appeal.**

SIGNED This 9 Day of Dec, 20 1.9

/s/ John H. Lipscombe
PRESIDING JUDGE

I understand that an appeal is perfected by timely filing a sufficient notice of appeal in writing and filed with the trial court clerk. I also understand the notice of appeal must be filed:

- (1) within 30 days after the day sentence is imposed or suspended in open court, or after the day the trial court enters an appealable order; or
- (2) within 90 days after the day sentence is imposed or suspended in open court if the

defendant timely files a motion for new trial.

I _____, DEFENDANT in the above styled and numbered cause, 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 Appeal's judgment and opinion to my last known address and that I have only 30 day 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 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 [sic] my appellate attorney of any change in my address, I may lose the opportunity to file a pro se petition for discretionary review.

DEFENDANT

Mailing address:

Telephone #:

Fax #:

/s/ Phil Campbell
ATTORNEY FOR DEFENDANT (trial)⁶
Mailing address: *100 E. Whitestone*
Cedar Park, TX 78613
telephone #: *512 825-3365*
fax # *512 267-7449*
State Bar Card # *03702700*

GIVE COPY TO DEFENDANT

“Certificate” deadlines in chronological context.

May, 2019.

- May 6. Probation revoked. Sentence imposed immediately. “No right to appeal” announced in court. No “Certificate.”
- Perkins appeals from jail.
- STATE “amends.” “Case 3” trial reset to Aug. 22.

July.

- **July 9** – 3d.CoA receives Record (for appeal of Probation revocation); **“Certificate” – first deadline set.**
- Perkins immediately asserts *LIPSCOMBE*’s “right to remain silent;” files next Mot. Disqualify / Recuse.

⁶ See Perkins’s verified *Mickens Objections*.

- **July 19 – “Certificate – deadline missed.**

Aug.

- Perkins files Brief.
- STATE files Brief.
- Aug. 22 – “Case 3,” the basis/reason for revocation, transferred (back) to CCL8.
- **Aug. 27 – 3d.CoA Abates and Remands for “Certificate” – second deadline set.**

Sept.

- **Sept. 26 – “Certificate” – deadline missed.**

Nov.

- Silence by 3d.CoA and LIPSCOMBE motivates filing, Serving Mandamus.

Dec.

- LIPSCOMBE signs a/the “Certificate” and has it delivered to Perkins for Perkins’s signature. *See, e.g., CCA Mand., First Status Report.]*
- CCA denies leave to file.
- Perkins confirms receipt of “Certificate” by other means (and supplies certified copy). Files into CCL3, 3d.CoA, CCA.

- County Clerk submits Supplemental Record to 3d.CoA with Perkins's Receipt (and its certified copy of the "Certificate").

Jan., 2020

- **Jan 21 – "Certificate" – third deadline set.**
- **Jan 24 – "Certificate" – deadline missed.**

It is now at least Feb. 23 (2020).