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February 20, 2004

JUSTICE CENTER
401 W. BELKNAP
FORT WORTH, TX 76196-0201

Ms. Stephanie Lavake, Clerk
Second District Court of Appeals
401 W. Belknap, Suite 9000
Fort Worth, TX 76196

Re: Barton Ray Gaines v. State of Texas
No. 02-02-00498-CR
02-02-00499-CR

Dear Ms. Lavake:

This letter is in response to Appellant's *pro se* brief on appeal. Among other things,[1] Appellant complains that the trial court erred in not *sua sponte* conducting a preliminary competency inquiry. *See* App. brief at 9-10. *See also* TEX. CODE CRIM. PROC. ANN. art. 46.02, § 2(b) (Vernon Supp. 2004)[2]; Alcott v. State, 51 S.W.3d 596, 601 (Tex. Crim. App. 2001) (preliminary competency inquiry necessary if there is "evidence sufficient to create a *bona fide* doubt in the judge's mind as to the defendant's competence to stand trial").

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[1]Appellant also complains that his guilty plea was involuntary and that his counsel at trial was ineffective. *See* App. brief at 11-21. These claims, however, rest on assertions that are outside the record and should therefore be overruled. *See* Janecka v. State, 937 S.W.2d 456, 476 (Tex. Crim. App. 1996) (appellate court should not review contentions based on outside-the-record factual assertions).

[2]This provision has since been repealed and moved to chapter 46B of the Code of Criminal Procedure. *See* Act of April 30, 2003, 78th Leg., R.S., ch. 35, 2003 Tex. Sess. Law Serv. 57 (Vernon) (effective January 1, 2004).

Appellant cannot show that evidence of his "mental conditions" given at trial was sufficient to constitute a *bona fide* doubt as to his competency. A person is incompetent if he does not have (1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against him. TEX. CODE CRIM. PROC. ANN. art. 46.02, § 1A(a) (Vernon Supp. 2004). The evidence relied on by Appellant is essentially that he has a learning disability, that he has attention deficit hyperactivity disorder, and that he has an intelligence quotient in the "dull normal range."[3] *See* RR IV - 159-64. These symptoms, however, are simply not enough to trigger the preliminary incompetency determination provisions of article 46.02. *See* Culley v. State, 505 S.W.2d 567, 569 (Tex. Crim. App. 1974) (testimony that defendant had learning disabilities and was in special education classes did not raise issue of competency); O'Neil v. State, 642 S.W.2d 259, 260 (Tex. App.--Houston [14th Dist.] 1982, no pet.) (evidence that defendant had "mental problem" and was "crazy" was irrelevant to incompetency determination).

In addition, it should be noted that Appellant's coherently produced *pro se* brief itself is evidence that he has a rational understanding of the proceedings and of the charges against him. *See* Hall v. State, 766 S.W.2d 903, 905 (Tex. App.--Fort Worth 1989, no pet.) ("In fact, the other correspondence and motions filed by Hall exhibit some degree of skill and expertise in criminal procedure methods and tend to show Hall was competent").

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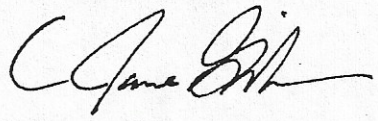
[3]Appellant has also appended several items to his brief in support of his claim. These should be ignored. *See* Martin v. State, 492 S.W.2d 471, 472 (Tex. Crim. App. 1973) (attachments to briefs not part of appellate record).

The trial court had no reason to doubt Appellant's competence. Therefore, the points of error contained in Appellant's *pro se* brief should be overruled. Please bring this letter to the Court's attention.

Respectfully submitted,



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