

NO. 07-05-0116-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL D
APRIL 7, 2005

Ex parte MICHAEL W. BUSH,

Appellant

FROM THE 154TH DISTRICT COURT OF LAMB COUNTY;
NO. 16,509; HON. FELIX KLEIN, PRESIDING

Order of Dismissal

Before QUINN, REAVIS, and CAMPBELL, JJ.

Michael W. Bush appeals from an order dismissing his application for writ of habeas corpus. The writ was sought to obtain release from the purported restraint of Bruce Peel, mayor of Littlefield, Texas. Peel had moved for dismissal, contending that the trial court lacked jurisdiction over the proceedings. The trial court granted the motion. We now dismiss the appeal for lack of jurisdiction.

One may not appeal from an order denying a writ of habeas corpus unless the order arose after a hearing on the merits and the trial court denied the application on the merits. *Ex parte Hargett*, 819 S.W.2d 866, 868 (Tex. Crim. App. 1991). Next, granting a motion to dismiss due to the absence of jurisdiction is not a ruling on the merits. *See Bland Indep.*

Sch. Dist. v. Blue, 34 S.W.3d 547, 554 (Tex. 2000); see also *City of Lubbock v. Rule*, 68 S.W.3d 853, 857 (Tex. App.–Amarillo 2002, no pet.). So because the trial court dismissed the appeal due to the lack of jurisdiction, we ourselves have no jurisdiction over the appeal. Accordingly, the appeal is dismissed for want of jurisdiction.

Brian Quinn
Justice

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