



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-17-00132-CR

EDRICK JAMAR DUNN, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

**On Appeal from the 140th District Court
Lubbock County, Texas
Trial Court No. 2011-432,529-B; Honorable Jim Bob Darnell, Presiding**

May 24, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Appellant, Edrick Jamar Dunn, an inmate proceeding *pro se*, attempts to appeal the trial court's order denying his motion to recuse filed in an article 11.07 habeas corpus proceeding pending in the trial court. We dismiss the appeal for want of jurisdiction.

BACKGROUND

In 2013, Appellant was convicted of aggravated robbery and sentenced to fifty years in prison. We affirmed his conviction in *Dunn v. State*, No. 07-13-00378-CR, 2014 Tex. App. LEXIS 8779 (Tex. App.—Amarillo Aug. 11, 2014, pet. ref'd) (mem. op., not designated for publication). In 2017, Appellant filed an application for writ of habeas corpus pursuant to article 11.07 of the Texas Code of Criminal Procedure and a motion to recuse in the trial court. The trial court denied the motion to recuse and the district clerk forwarded the application for writ of habeas corpus to the Court of Criminal Appeals.

Notwithstanding the fact that the article 11.07 proceeding had been forwarded to the Court of Criminal Appeals, Appellant subsequently filed a petition for writ of mandamus and a notice of appeal in this court complaining that the trial court should not have denied his motion to recuse, but should have, instead, referred the motion to the regional presiding judge as required by Texas Rule of Civil Procedure 18a(f)(1).¹ We denied his petition for writ of mandamus in *In re Dunn*, No. 07-17-00084-CV, 2017 Tex. App. LEXIS 3127 (Tex. App.—Amarillo Apr. 10, 2017, orig. proceeding) (mem. op.). While his appeal of the denial of his motion to recuse was still pending, the Court of Criminal Appeals issued an order remanding Appellant's application for writ of habeas corpus to the trial court with instructions to refer the motion to recuse to the regional presiding judge for decision. *See Ex parte Dunn*, No. WR-83,930-02, 2017 Tex. Crim.

¹ Appellant also filed two supplemental notices of appeal in this court, titled *Chief Notice of Appeal* and *Permission to Appeal*, seeking the same relief as his original notice of appeal filed in this cause.

App. Unpub. LEXIS 315 (Tex. Crim. App. Apr. 26, 2017, order) (per curiam) (not designated for publication).

APPLICABLE LAW

Generally, in a criminal case, a defendant has the right to appeal “a judgment of guilt or other appealable order.” See TEX. R. APP. P. 25.2(a)(2). An “appealable order,” including an interlocutory order, is only appealable where specifically authorized by a statutory or constitutional provision. See *Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014); *Abbott v. State*, 271 S.W.3d 694, 696–97 (Tex. Crim. App. 2008) (“The standard for determining jurisdiction is not whether the appeal is precluded by law, but whether the appeal is authorized by law.”). Furthermore, each time a judgment of guilt or appealable order is entered, the trial court must certify that the defendant has a right of appeal. See TEX. R. APP. P. 25.2(a)(2), (d); *Gutierrez v. State*, 307 S.W.3d 318, 321 (Tex. Crim. App. 2010). Here, no such trial court certification has been filed.

ANALYSIS

Appellant has cited no authority providing that an interlocutory order denying a motion to recuse is an appealable order.² Indeed, we find the contrary to be true. See TEX. R. CIV. P. 18a(j) (“An order denying a motion to recuse may be reviewed only for abuse of discretion on appeal from the final judgment.”). *Hranicky v. State*, No. 01-11-00557-CR, 2013 Tex. App. LEXIS 5233, at *3 (Tex. App.—Houston [1st Dist.] Apr. 30, 2013, pet. ref’d) (mem. op., not designated for publication) (finding no authority allowing an interlocutory appeal from an order on a motion to recuse).

² By letter dated April 27, 2017, we provided Appellant the opportunity to show why this court has jurisdiction to review the trial court’s order, but his response failed to do so.

Furthermore, even if the order was appealable, we have no jurisdiction to review this ruling by the trial court in an article 11.07 habeas corpus proceeding. See *Ex parte Banister*, No. 07-09-0128-CR, 2009 Tex. App. LEXIS 5178, at *4-5 (Tex. App.—Amarillo, July 7, 2009, orig. proceeding) (concluding that a trial court’s ruling on a motion to recuse stemming from an 11.07 application for writ of habeas corpus is not reviewable by direct appeal to courts of appeals).

Finally, Appellant received the relief he seeks in this appeal on April 26, 2017, when the Court of Criminal Appeals ordered the trial court to refer the motion to recuse to the regional presiding judge. See *Ex parte Dunn*, 2017 Tex. Crim. App. Unpub. LEXIS 315, at *1. This attempted appeal is, therefore, moot.

For these reasons, the appeal is dismissed for want of jurisdiction.

Patrick A. Pirtle
Justice

Do not publish.