



**IN THE
TENTH COURT OF APPEALS**

No. 10-20-00193-CR

BILLY BOOKER,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 413th District Court
Johnson County, Texas
Trial Court No. F48257**

MEMORANDUM OPINION

On June 1, 2020, appellant, Billy Joe Booker, filed his notice of appeal in this matter, stating that he wishes to appeal “from the judgment of . . . fact findings and conclusions of petitions for judiciary review of document[s] and instruments pursuant to Texas Gov’t Code Section 51.903.”¹ Attached to his notice of appeal is an additional document stating

¹ Section 51.903 of the Texas Government Code refers to an action pertaining to a fraudulent lien on real or personal property. *See* TEX. GOV’T CODE ANN. § 51.903. This statutory provision is not relevant to Booker’s complaints about the indictment in his criminal case.

that he is “appealing the non-decision on a motion of judicial review of a fraudulent indictment by operation of law.” The notice of appeal was received and filed in this Court on July 21, 2020.²

The right of appeal in a criminal case is a statutorily-created right. *See* TEX. CODE CRIM. PROC. ANN. art. 44.02; *Bayless v. State*, 91 S.W.3d 801, 805 (Tex. Crim. App. 2002). Generally, a criminal defendant may only appeal from a final judgment. *State v. Sellers*, 790 S.W.2d 316, 321 n.4 (Tex. Crim. App. 1990). Because Booker is not appealing from a judgment of conviction or an otherwise appealable order, we have no jurisdiction. *See Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014) (“[T]he standard for determining jurisdiction is not whether the appeal is precluded by law, but whether the appeal is authorized by law.” (quoting *Abbott v. State*, 271 S.W.3d 694, 696-97 (Tex. Crim. App. 2008))).

In any event, we note that the Texas Court of Criminal Appeals has held that the exclusive post-conviction remedy in final felony convictions in Texas courts is through a petition for writ of habeas corpus filed pursuant to article 11.07 of the Code of Criminal

² In other correspondence received from Booker, he mentions a second notice of appeal filed with the Johnson County District Clerk. Specifically, Booker refers to it as an out-of-time appeal. The Court has not received a notice of an out-of-time appeal. And unless such a notice was filed after relief was granted by the Court of Criminal Appeals on an 11.07 writ, this Court would have no jurisdiction of such post-conviction relief.

Procedure.³ *See Olivo v. State*, 918 S.W.2d 519, 520 n.8 (Tex. Crim. App. 1996); *Ex parte Mendenhall*, 209 S.W.3d 260, 261 (Tex. App.—Waco 2006, no pet.); *see also* TEX. CODE CRIM. PROC. ANN. art. 11.07. Moreover, only the Texas Court of Criminal Appeals has jurisdiction over post-conviction writs of habeas corpus in felony cases. *See Ex parte Martinez*, 175 S.W.3d 510, 512-13 (Tex. App.—Texarkana 2005, orig. proceeding); *Self v. State*, 122 S.W.3d 294, 294-95 (Tex. App.—Eastland 2003, no pet.).

Therefore, based on the foregoing, we dismiss Booker’s appeal for want of jurisdiction.

Booker may file a motion for rehearing with this Court within fifteen (15) days after the opinion and judgment are rendered. *See* TEX. R. APP. P. 49.1. If Booker desires to have the decision of this Court reviewed by filing a petition for discretionary review, that petition must be filed with the Court of Criminal Appeals within thirty (30) days after either this Court’s judgment was rendered or the day the last timely motion for rehearing was overruled by this Court. *See id.* at R. 68.2(a).

JOHN E. NEILL
Justice

³ It is also worth mentioning that we informed Booker that his complaints in this appeal appear to be directed at his conviction in appellate cause number 10-16-00169-CR. We issued our opinion affirming the trial court’s judgment on February 15, 2017, and we issued our mandate on April 28, 2017, thus ending our jurisdiction of Booker’s appeal in appellate cause number 10-16-00169-CR.

Before Chief Justice Gray
Justice Davis, and
Justice Neill

Dismissed

Opinion delivered and filed August 5, 2020

Do not publish

[CRPM]

