

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

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**NO. 03-12-00522-CR**

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**James Wesley McCartney, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE DISTRICT COURT OF TOM GREEN COUNTY, 51ST JUDICIAL DISTRICT  
NOS. CR-92-0532-A & CR-92-0533-A,  
THE HONORABLE BARBARA L. WALTHER, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

James Wesley McCartney seeks to appeal the district court’s order denying his “Motion for Leave to File a Post Conviction Application for Habeas Corpus Relief Pursuant to Article V, Section 8 of the Texas Constitution.” We dismiss the appeal.

The district court’s order denying his motion for leave to file a writ application did not address the merits of McCartney’s writ application. Thus, because the district court did not rule on the merits of his application, the order cannot be appealed. *See Ex parte Villanueva*, 252 S.W.3d 391, 394 (Tex. Crim. App. 2008) (“Only when a hearing is held on the merits of an applicant’s claims and there is a ruling on the merits of the claims may a losing party appeal.”); *Ex parte Hargett*, 819 S.W.2d 866, 869 (Tex. Crim. App. 1991) (habeas corpus applicant may only appeal denial of relief on merits); *see also Ex parte Gonzales*, 12 S.W.3d 913, 914 (Tex. App.—Austin 2000, pet. ref’d).

Accordingly, we dismiss the appeal for lack of jurisdiction.

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J. Woodfin Jones, Chief Justice

Before Chief Justice Jones, Justices Rose and Goodwin

Dismissed for Want of Jurisdiction

Filed: August 22, 2012

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