

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

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**NO. 03-16-00578-CR**

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**Robert Charles Henderson, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE DISTRICT COURT OF BELL COUNTY, 426TH JUDICIAL DISTRICT  
NO. 75813, THE HONORABLE MARTHA J. TRUDO, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

Appellant Robert Charles Henderson attempts to appeal from the trial court's extradition order remanding him to the custody of the State of Mississippi to face a charge of false reporting of explosives. We dismiss the appeal for lack of jurisdiction.

Appellant was booked into the Bell County Jail on an outstanding fugitive warrant from Mississippi. Pursuant to the Uniform Criminal Extradition Act, appellant was taken before a judge of this state and informed of Mississippi's request for extradition. *See* Tex. Code Crim. Proc. art. 51.13, § 10. Appellant declined to waive extradition, *see id.* art. 51.13, § 25a, and requested an attorney on the extradition matter.<sup>1</sup> Subsequently, a governor's extradition warrant was issued. *See id.* art. 51.13, § 7. The record indicates that following the issuance of the governor's warrant, the trial court conducted an extradition hearing, during which the State submitted the governor's warrant

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<sup>1</sup> The record reflects that an attorney was appointed the next day.

and supporting paperwork from Mississippi to the court. At the conclusion of the hearing, the trial court issued an extradition order remanding appellant to the custody of Mississippi authorities. Appellant filed a pro se *Motion to Appeal and Motion to Exclude Government Warrant* [sic], which indicates that he is attempting to appeal the trial court's decision regarding his extradition. We do not have jurisdiction over such an appeal.

In Texas, appeals in a criminal case are permitted only when they are specifically authorized by statute. *State ex rel. Lykos v. Fine*, 330 S.W.3d 904, 915 (Tex. Crim. App. 2011); see *Bayless v. State*, 91 S.W.3d 801, 805 (Tex. Crim. App. 2002) (“[A] defendant’s right of appeal is a statutorily created right.”). The standard for determining whether an appellate court has jurisdiction to hear and determine a case “is not whether the appeal is precluded by law, but whether the appeal is authorized by law.” *Blanton v. State*, 369 S.W.3d 894, 902 (Tex. Crim. App. 2012) (quoting *Abbott v. State*, 271 S.W.3d 694, 696–97 (Tex. Crim. App. 2008)); *State ex rel. Lykos*, 330 S.W.3d at 915. Article 51.13 of the Texas Code of Criminal Procedure, the Uniform Criminal Extradition Act, governs extradition proceedings. The act does not provide for an appeal or an appeal process. Instead, the act reflects that any challenge to the extradition or the procedures under the act must be made by applying for a writ of habeas corpus as authorized by Section 10 of the act. See Tex. Code Crim. Proc. art. 51.13, § 10 (requiring trial court to “fix a reasonable time to be allowed the prisoner in which to apply for a writ of habeas corpus” if prisoner “desire[s] to test the legality of his arrest” on the governor’s extradition warrant).

The only vehicle for testing the legality of a governor’s extradition warrant is an application for writ of habeas corpus. *Ex parte Chapman*, 601 S.W.2d 380, 382–83 (Tex. Crim.

App. 1980); *Ex parte Walker*, 350 S.W.3d 417, 419 (Tex. App.—Eastland 2011, pet. ref’d); *Stelbacky v. State*, 22 S.W.3d 583, 587 (Tex. App.—Amarillo 2000, no pet); see *McPherson v. State*, 752 S.W.2d 178, 179 (Tex. App.—San Antonio 1988, pet. ref’d, untimely filed) (“It is settled that the only method of contesting extradition proceedings is by way of habeas corpus.”). The appealable judicial determination in an extradition proceeding occurs only if the arrestee challenges the extradition by way of an application for writ of habeas corpus and receives an adverse ruling by the trial court. *Ex parte Chapman*, 601 S.W.2d at 383; *Martinez v. State*, 688 S.W.2d 201, 202 (Tex. App.—Corpus Christi 1985, no pet.). If no application for writ of habeas corpus is filed, the arrestee is not in the posture of an applicant for habeas corpus whose prayer for relief has been denied for appellate purposes—even if the trial court gratuitously holds an extradition hearing and enters an extradition order. *Ex parte Chapman*, 601 S.W.2d at 383; see *Martinez*, 688 S.W.2d at 202. The appealable order in an extradition proceeding is the trial court’s order denying the arrestee’s application for writ of habeas corpus, not any extradition order the trial court may enter.<sup>2</sup> *Ex parte Chapman*, 601 S.W.2d at 383; see *Martinez*, 688 S.W.2d at 202 (“no appeal may be taken from the trial court’s order [of extradition]”).

Here, appellant never filed an application for writ of habeas corpus to challenge his extradition to Mississippi. Consequently, such application was never denied by the trial court. Because our jurisdiction in extradition proceedings is limited to consideration of an appeal from the

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<sup>2</sup> Even if the trial court chooses to conduct an extradition hearing, it is “not required to make any determination other than by proper motion for writ of habeas corpus challenging [the] legality of [the] arrest under the [governor’s] warrant.” *McPherson v. State*, 752 S.W.2d 178, 180 (Tex. App.—San Antonio 1988, pet. ref’d, untimely filed).

denial of relief on an application for writ of habeas corpus, we lack jurisdiction to consider this appeal and must dismiss it. See *Ex parte Chapman*, 601 S.W.2d at 383; *Ex parte Dale*, No. 13-12-00496-CV, 2012 WL 4753955, at \*1 (Tex. App.—Corpus Christi Oct. 4, 2012, no pet.) (mem. op., not designated for publication); *Owens v. State*, No. 01-04-00841-CR, 2005 WL 497744, at \*1 (Tex. App.—Houston [1st Dist.] Mar. 3, 2005, no pet.) (mem. op., not designated for publication); *McPherson*, 752 S.W.2d at 180; *Martinez*, 688 S.W.2d at 202. Accordingly, we dismiss the appeal.<sup>3</sup>

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Melissa Goodwin, Justice

Before Chief Justice Rose, Justices Goodwin and Bourland

Dismissed for Want of Jurisdiction

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<sup>3</sup> We also observe that documents contained in the clerk's record indicate that appellant has been released into the custody of agents from Mississippi and is no longer in Texas. Under these circumstances, his appeal challenging his extradition is moot. See *Ex parte Stowell*, 940 S.W.2d 241, 243 (Tex. App.—San Antonio 1997, no writ) (dismissing appeal after concluding that appellant's extradition to another jurisdiction rendered appeal moot in this jurisdiction); see, e.g., *Ex parte Parks*, No. 09-11-00385-CR, 2011 WL 3505449, at \*1 (Tex. App.—Beaumont Aug. 10, 2011, no pet.) (mem. op., not designated for publication) (appellant's extradition to Florida rendered appeal challenging extradition moot); *Ex parte Scott*, No. 02-08-00425-CR, 2009 WL 1564939, at \*1 (Tex. App.—Fort Worth June 4, 2009, no pet.) (mem. op., not designated for publication) (appellant's extradition to New Jersey rendered appeal challenging extradition moot); *Ex parte Kirkpatrick*, No. 05-05-00595-CR, 2005 WL 1163981, at \*1 (Tex. App.—Dallas May 18, 2005, no pet.) (mem. op., not designated for publication) (appellant's extradition to Arizona rendered appeal challenging extradition moot); *Ex parte Mayhew*, No. 03-03-00719-CR, 2004 WL 1278087, at \*1 (Tex. App.—Austin June 10, 2004, no pet.) (mem. op., not designated for publication) (appellant's extradition to Arkansas rendered appeal challenging extradition moot).