

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-21-00682-CR

In re Jose Alberto Alejandro-Najarro

**FROM THE 207TH DISTRICT COURT OF HAYS COUNTY
NO. CR-16-0499, THE HONORABLE JACK H. ROBISON, JUDGE PRESIDING**

ORDER AND MEMORANDUM OPINION

PER CURIAM

Jose Alberto Alejandro-Najarro, an inmate in the Texas Department of Criminal Justice, filed a motion for forensic DNA testing with the trial court. *See* Tex. Code Crim. Proc. art. 64.01. On December 16, 2021, the trial court entered findings of fact and conclusions of law “recommend[ing] that [Alejandro-Najarro’s] grounds for relief be” denied. Alejandro-Najarro seeks to appeal the trial court’s purported denial of his motion.

In criminal cases, we have jurisdiction to consider an appeal from the entry of an appealable order. *See* Tex. R. App. P. 25.2, 26.2(a)(1); Tex. Code Crim. Proc. art. 44.02; *State v. Sanavongxay*, 407 S.W.3d 252, 259 (Tex. Crim. App. 2012) (noting that “[Court’s] precedent requires that an order be in writing” when discussing State’s statutory right to appeal pretrial suppression order); *see also State v. Rosenbaum*, 818 S.W.2d 398, 401–02 (Tex. Crim. App. 1991) (holding that for purposes of appeal, trial court “enters” order when judge signs order).

The record before us contains no signed written order denying Alejandro-Najarro’s motion for forensic DNA testing. In his notice of appeal filed with this Court, Alejandro-Najarro asserts that the trial court judge “denied the defendant’s Chapter 64 DNA motion on December 16, 2021.” Although the trial court entered its findings of fact and conclusions of law on that date, such a document is not a final appealable order. *See State v. Davis*, No. 03-15-00616-CR, 2015 WL 7424702, at *1 (Tex. App.—Austin Nov. 19, 2015, no pet.) (mem. op., not designated for publication) (agreeing that court’s findings and conclusions did not constitute an appealable order); *State v. Ortiz*, No. 07-10-00233-CR, 2010 WL 5058558, at *1 (Tex. App.—Amarillo Dec. 10, 2010, no pet.) (mem. op., not designated for publication) (“We conclude the document containing findings of fact and conclusions of law does not constitute a signed written order granting the motion to suppress.”).

Accordingly, we abate this cause and remand it to the trial court for entry of a signed order on Alejandro-Najarro’s motion for forensic DNA testing. *See Tex. R. App. P. 44.4(b)* (requiring appellate court to direct trial court to correct remediable error that prevents proper presentation of appeal). Once entered, the signed order shall be included in a supplemental clerk’s record and filed with this Court within thirty days from the date of this order. This appeal will be reinstated after the supplemental clerk’s record is filed.

It is so ordered on May 10, 2022.

Before Chief Justice Byrne, Justices Kelly and Smith

Abated and Remanded

Filed: May 10, 2022

Do Not Publish