



NUMBER 13-19-00308-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ISRAEL GONZALES,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 156th District Court
of Bee County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Longoria, and Perkes
Memorandum Opinion by Justice Perkes**

Appellant Israel Gonzales filed a notice of appeal from cause number B-17-2164-0-CR-B in the 156th District Court of Bee County, Texas after the trial court orally denied his application for habeas corpus relief. On June 21, 2019, the Clerk of this Court notified appellant that it appeared that there was not a final, appealable judgment in this case and

requested correction of this defect, if it could be done. See TEX. R. APP. P. 37.1. The Clerk notified appellant that the appeal would be dismissed if the defect was not cured.

In response, appellant filed a motion for extension of time to allow preparation of a final, appealable order and findings of fact and conclusions of law. We granted appellant's request for an extension of time until August 16, 2019. Appellant then filed a motion to order the trial court to sign an appealable order and findings of fact. We denied that motion.

On August 16, 2019, appellant has now filed a second motion requesting that we again extend the time to allow preparation of a final appealable order and findings of fact and conclusions of law and requesting that we set the due date for filing his appellate brief. According to this motion, the trial court has been requested to sign an appealable order but has not yet done so.

In criminal cases, this Court has jurisdiction to consider appeals from the entry of an appealable order. See TEX. R. APP. P. 25.2; TEX. CODE CRIM. PROC. ANN. art. 44.02; see also TEX. R. APP. P. 26.2(a)(1). However, there must be a written, signed order from which to appeal. See *State v. Wachtendorf*, 475 S.W.3d 895, 904 (Tex. Crim. App. 2015) (stating that the "trial court's oral pronouncements on the record do not constitute appealable orders"); *State v. Sanavongxay*, 407 S.W.3d 252, 259 (Tex. Crim. App. 2012) (noting that "our precedent requires that an order be in writing" when discussing the State's statutory right to appeal a 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, the trial court "enters" an order when the judge signs the written order). In this context, a docket sheet entry does not constitute an appealable order. See *State v.*

Garza, 931 S.W.2d 560, 562 (Tex. Crim. App. 1996) (en banc); *State v. Shaw*, 4 S.W.3d 875, 878 (Tex. App.—Dallas 1999, no pet.).

The record before us contains no written, signed order denying appellant's application for writ of habeas corpus. Accordingly, appellant's notice of appeal does not confer jurisdiction upon the Court. See *Henderson v. State*, 153 S.W.3d 735, 735–36 (Tex. App.—Dallas 2005, no pet.). Any contention that the trial court has failed to perform its ministerial duty to sign an order disposing of the habeas application must be brought in an application for writ of mandamus. See *Gutierrez v. State*, 307 S.W.3d 318, 322 (Tex. Crim. App. 2010); *Winters v. Presiding Judge of the Crim. Dist. Court No. Three of Tarrant County*, 118 S.W.3d 773, 775 (Tex. Crim. App. 2003); see also *Ex parte Blakely*, No. 05-18-00554-CR, 2018 WL 3545025, at *1 (Tex. App.—Dallas July 24, 2018, no pet.).

The Court, having examined and fully considered the notice of appeal and the matters before the Court, is of the opinion that there is not an appealable order and this Court lacks jurisdiction over the matters herein. We deny appellant's pending motion to extend time to provide an appealable order and to allow findings of fact and conclusions of law, and appellant's request to set a due date for his brief. We DISMISS the appeal for want of jurisdiction.

GREGORY T. PERKES
Justice

Do not publish.
See TEX. R. APP. P. 47.2(b).

Delivered and filed the
19th day of September, 2019.