



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0280-15

THE STATE OF TEXAS

v.

JOHN ALLEN WACHTENDORF, JR., Appellee

**ON STATE'S PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD COURT OF APPEALS
WILLIAMSON COUNTY**

NEWELL, J., filed a concurring opinion.

I agree with the plurality that the court of appeals properly dismissed the State's appeal in this case because the court of appeals lacked jurisdiction. I write separately because I believe the plurality opinion in this case serves no purpose when the court of appeals opinion correctly laid out the settled, applicable law and properly resolved the issue at hand based upon this Court's existing precedent. *State v. Wachtendorf*, No. 03-14-0633-CR, 2015 WL 894731 at *2 (Tex. App.–Austin Feb. 26, 2015) (not designated for

publication) (holding that the State's notice of appeal was untimely based upon *State v. Rosenbaum*, 818 S.W.2d 398 (Tex. Crim. App. 1991) and *State ex rel. Sutton v. Bage*, 822 S.W.2d 55 (Tex. Crim. App. 1992)). As a matter of consistency, we should have resolved this case in the same way we resolved *Davis v. State*—by simply refusing discretionary review. *Davis v. State*, No. PD-1490-14, slip op. at 2 (Tex. Crim. App. Mar. 18, 2015) (not designated for publication). Because that avenue is no longer available, we should just dismiss the petition for discretionary review as improvidently granted now that it is clear that the court of appeals reached the right result for the right reasons.

With these thoughts I concur.

Filed: November 18, 2015

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