



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

DANNY WILLIE FLORES,	§	
Appellant,	§	No. 08-21-00056-CR
v.	§	Appeal from the
THE STATE OF TEXAS,	§	112th District Court
Appellee.	§	of Pecos County, Texas
	§	(TC# P-4041-112-CR)
	§	

MEMORANDUM OPINION

Danny Willie Flores attempts this appeal of a pretrial order denying his motion to suppress evidence while criminal proceedings against him remain pending on a charge of possession of a controlled substance. We dismiss for want of interlocutory jurisdiction.

The right of appeal in criminal cases is conferred by the Legislature, and a party may appeal only from judgments of conviction or interlocutory orders authorized by statute. *Mack v. State*, 549 S.W.3d 746, 747 (Tex. App.—Waco 2017, pet. ref'd). Article 44.02 of the Texas Code of Criminal Procedure sets out the standard for a defendant's right to appeal in a criminal case. It

establishes that a criminal defendant “has the right of appeal under the rules hereinafter prescribed,” provided that “before the defendant who has been convicted upon either his plea of guilty or plea of nolo contendere . . . may prosecute his appeal, he must have permission of the trial court, except on those matters which have been raised by written motion filed prior to trial.” *See* TEX.CODE CRIM.PROC.ANN. art. 44.02.

In the trial court, Flores has pleaded not guilty to a charge of possession of a controlled substance. On October 19, 2020, Flores filed a motion to suppress, which was denied on March 24, 2021. On April 12, 2021, Flores filed a notice of appeal from the trial court’s denial of his motion to suppress. On the docketing certificate, under the entry for “sentence imposed,” the District Clerk for the 112th District Court indicated: “CASE IS CURRENTLY PENDING,” and the date sentence was imposed in open court is listed as “N/A.”

A ruling on a motion to suppress like this one is an interlocutory order. *See State v. Villegas*, 506 S.W.3d 717, 732 (Tex. App.—El Paso 2016, pet. dismiss’d). We questioned our jurisdiction over this interlocutory appeal; and the Clerk of the Court sent Flores a notice that we intended to dismiss this action unless Flores could show grounds for the appeal to continue. In his response to our jurisdictional inquiry, Flores maintains that the portion of article 44.02 of the Texas Code of Criminal Procedure, which states “except on those matters which have been raised by written motion filed prior to trial,” authorizes this Court to entertain an interlocutory appeal from the trial court’s order denying Flores’s written motion to suppress. We disagree.

The Texas Court of Criminal Appeals has construed a criminal defendant’s right to appeal under article 44.02 as being limited to an appeal from a final judgment of conviction. *See State v. Sellers*, 790 S.W.2d 316, 321 n.4 (Tex. Crim. App. 1990); *see also Ex parte Evans*, 611 S.W.3d 86, 87 (Tex. App.—Waco 2020, no pet.). The language Flores cites as creating interlocutory

jurisdiction in fact only exempts a defendant who pleads guilty or nolo contendere and is convicted of an offense pursuant to his negotiated plea from “hav[ing] permission of the trial court” before the defendant “may prosecute his appeal” with respect to “those matters which have been raised by written motion filed prior to trial.” *See* TEX.CODE CRIM.PROC.ANN. art. 44.02.

In other words, the written motions clause of article 44.02 allows a defendant who has raised a matter in a written pretrial motion to raise that issue in an appeal from a conviction arising from a negotiated plea without first obtaining the trial judge’s permission. *Accord* TEX.R.APP.P. 25.2(a) (recognizing that pursuant to Article 44.02 a criminal defendant in a plea bargain case may appeal (1) only those matters that were raised by written motion filed and ruled on before trial, (2) after getting the trial court’s permission to appeal, or (3) where the specific appeal is expressly authorized by statute). Indeed, the language dealing with written motions in Article 44.02 was added to the statute due to concerns about preservation of error and to recognize that a criminal defendant who wishes to appeal a conviction could preserve issues for appellate review by raising them in a pretrial written motion, even where the defendant ultimately pleads guilty or nolo contendere. *See Carson v. State*, 559 S.W.3d 489, 497 (Tex. Crim. App. 2018) (Keller, P.J., concurring in part and dissenting in part) (describing the 1977 legislative history of Article 44.02 and stating that Article 44.02 narrowed the right to appeal in negotiated plea bargains where punishment did not exceed agreed upon range, but that the language dealing with written motions in Article 44.02 permitted defendants to appeal from plea bargain convictions and complain of error raised in written pretrial rulings so that a defendant did not have to go to trial in order to preserve a legal issue for appellate review, which was procedurally required before this language was adopted) (citing *Griffin v. State*, 145 S.W.3d 645, 646-47 (Tex. Crim. App. 2004)).

The written motion language in article 44.02 dealing with a criminal defendant’s right to

appeal does not, by its own terms, authorize a criminal defendant to file an interlocutory appeal from pretrial orders. *See Sellers*, 790 S.W.2d at 321; *compare* TEX.CODE CRIM.PROC.ANN. art. 44.01(a) (limiting the State’s right to appeal to certain explicitly enumerated interlocutory orders). Only appeals from a final judgment of conviction are authorized by article 44.02. *See Sellers*, 790 S.W.2d at 321.

Here, Flores has pleaded not guilty, the order denying the motion to suppress is interlocutory, and trial is pending with no final judgment at bar. Since article 44.02 does not by its own terms authorize an interlocutory appeal, since no other provision of Chapter 44 generally would authorize an interlocutory appeal, and since Flores has not demonstrated that another statutory provision would authorize an interlocutory appeal from a pretrial motion to suppress, we conclude we lack jurisdiction over this interlocutory order.

This attempted appeal is hereby dismissed.

GINA M. PALAFOX, Justice

May 14, 2021

Before Rodriguez, C.J., Palafox, and Alley, JJ.

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