



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

|                 |   |                          |
|-----------------|---|--------------------------|
|                 | § | No. 08-21-00199-CR       |
| EX PARTE:       | § | Appeal from the          |
| BILAL MUHAMMAD, | § | 168th District Court     |
| Appellant.      | § | of El Paso County, Texas |
|                 | § | (TC# 20160D01015)        |

**MEMORANDUM OPINION ON MOTION FOR REHEARING**

Bilal Muhammad invoked the jurisdiction of this Court to complain of the trial court's consideration of his pretrial detention bond. But after filing his brief, he filed a motion to voluntarily dismiss this appeal, which we granted. *Ex parte Muhammad*, No. 08-21-00199-CR, 2022 WL 287042, at \*1 (Tex.App.--El Paso Jan. 31, 2022, no pet. h.) (mem. op., not designated for publication). He then filed a timely motion for rehearing that re-urges the several merits arguments that he originally made. We grant the motion for rehearing on the sole ground that the motion for rehearing suggests he did not intend to voluntarily dismiss his appeal under TEX.R.APP.P. 42.2(a). The opinion and judgment of this Court issued January 31, 2022, is withdrawn and the following is the opinion of the Court. We dismiss Appellant's appeal for want of jurisdiction.

Muhammad was indicted for the December 2015 murder of Lane Wiscombe. The Clerk's Record before us reflects that he was assigned a public defender in January 2016. His assigned counsel promptly filed a motion to reduce his bond from \$750,000 to either a personal bond or to an amount he could meet. In April 2016, the court reduced the bond to \$450,000, requiring either a cash deposit or corporate surety. Muhammad then filed a pro se appeal from that order, contending that the trial court denied habeas corpus relief. We concluded that the trial court's order could not be construed as a denial of habeas corpus relief, and that we lacked jurisdiction to hear an interlocutory appeal regarding excessive bail or the denial of bail. *Ex Parte Muhammad*, No. 08-16-00079-CR, 2016 WL 3563924, at \*1 (Tex.App.--El Paso June 29, 2016, pet. ref'd) (mem. op., not designated for publication), *citing Ragston v. State*, 424 S.W.3d 49, 52 (Tex.Crim.App. 2014) ("There is no constitutional or statutory authority granting the courts of appeals jurisdiction to hear interlocutory appeals regarding excessive bail or the denial of bail.").

Over the next several years, Muhammad was represented by a succession of attorneys. In December 2018, Muhammad retained attorney Joe Spencer, who thereafter successfully moved to add co-counsel Felix Valenzuela, and Heather Hall in November 2019. Those attorneys filed a motion to reduce Muhammad's bond, and then an Application for Writ of Habeas Corpus seeking bail. In December 2020, Muhammad's attorneys were successful in prevailing on the trial court to reduce his bond to \$50,000 cash or corporate surety, and \$400,000 personal recognizance. Additionally, Muhammad was required to reside at the El Paso Rescue Mission and abide by all its rules. In May 2021, his attorneys filed a motion to modify the term of the bond order, which would allow Muhammad to move from the El Paso Rescue Mission to alternative housing. His attorneys followed up with a June 4, 2021 Application for Writ of Habeas Corpus, that complained about the living conditions at the El Paso Rescue Mission. But following a hearing, the trial judge

responded on June 16, 2021, revoked Muhammad’s bond, ordered him detained, and reset the bond at \$500,000 cash or corporate surety.

Muhammad then filed a pro se writ of mandamus with this Court challenging that order. We denied the mandamus, noting first that Muhammad was represented below by counsel and “defendants are generally not entitled to hybrid representation in which they represent themselves while also being represented by appointed counsel, and a court, including an appellate court, is free to disregard any pro se motions presented by a defendant who is represented by counsel, since the pro se motion presents nothing for the court to review.” *In re Muhammad*, No. 08-21-00123-CR, 2021 WL 3629989, at \*1 (Tex.App.--El Paso Aug. 17, 2021, orig. proceeding). We also noted that even if we considered the petition on the merits, Muhammad failed to show that the trial court’s actions constituted an abuse of discretion. *Id.* Several days after the trial court revoked the bond, Muhammad had filed a pro se application for writ of habeas corpus. Responding to his complaint that the trial court failed to rule on that application, we noted that he had not established an abuse of discretion because the application had been pending less than a month by the time that he filed his mandamus. *Id.*

On August 2, 2021, Muhammad also filed a pro se notice of appeal of the trial court’s June 16, 2021 order. We, however, dismissed that appeal for want of jurisdiction. *Muhammad v. State*, No. 08-21-00134-CR, 2021 WL 4988308, at \*1 (Tex.App.--El Paso Oct. 27, 2021, no pet.) (mem. op., not designated for publication). We stated:

The Legislature has not vested appellate courts with jurisdiction to consider direct appeals from interlocutory pretrial bail rulings. *Chestang v. State*, Nos. 12-16-00305-CR, 12-16-00306-CR, 2017 WL 104637, at \*1 (Tex.App.--Tyler Jan. 11, 2017, no pet.) (mem. op., not designated for publication) (per curiam); *see also McCarver v. State*, 257 S.W.3d 512, 515 (Tex.App.--Texarkana 2008, no pet.). As the court of criminal appeals has explained, “[t]here is no constitutional or statutory authority granting the courts of appeals jurisdiction to hear interlocutory appeals regarding excessive bail or the denial of bail.” *Ragston v. State*, 424 S.W.3d 49, 52

(Tex. Crim. App. 2014). Accordingly, we lack jurisdiction to consider Appellant's appeal from the trial court's pretrial bail ruling in this case. *See id.*; *Thomas v. State*, No. 05-20-00722-CR, 2020 WL 5757340, at \*1 (Tex.App.--Dallas Sept. 28, 2020, no pet. h.) (mem. op., not designated for publication); *Olageshin v. State*, No. 04-20-00057-CR, 2020 WL 1159065, at \*1 (Tex.App.--San Antonio Mar. 11, 2020, no pet.) (mem. op., not designated for publication) (per curiam); *Chestang*, 2017 WL 104637, at \*1; *Bridle v. State*, 16 S.W.3d 906, 908 (Tex.App.--Fort Worth 2000, no pet.).

*Id.*

And while that appeal was still before our Court, Muhammad filed another pro se Application for Writ of Habeas Corpus, seeking pretrial release. On November 18, 2021, the trial court signed an order that denied the "Application for Writ of Habeas Corpus Seeking Bail" as filed by his defense counsel, Felix Valenzuela, on June 4, 2021. The trial court's order also states that it "declined to take up the motions filed pro se by the Defendant, Bilal Muhammad because he was represented by counsel." Muhammad then filed another pro se notice of appeal that forms the basis of this appeal. That notice over several pages makes clear he is complaining of: (1) being "muted" at the hearing below, (2) the evidence that was offered on the question of his residence at the El Paso Rescue Mission; (3) the statements made by the Assistant District Attorney at the hearing; and (4) trial court's decision revoking his bond.

Muhammad's newest notice of appeal fails to present this Court with any issue that has not already been addressed. First, the trial court's newest order makes clear it refused to address the several pro se applications for habeas corpus that he has filed. That was not error. A trial court might permit hybrid representation in its discretion, but there is no absolute right to hybrid representation. *See Scarbrough v. State*, 777 S.W.2d 83, 92 (Tex.Crim.App. 1989) (en banc). Therefore, if an accused is represented by counsel, the trial court is free to disregard the accused's pro se filings. *Ex parte Bohannan*, 350 S.W.3d 116, 116 n.1 (Tex.Crim.App. 2011) ("Because applicant is represented by counsel, we disregard his numerous pro se submissions and take no

action on them.”); *In re Hernandez*, No. 08-21-00189-CR, 2021 WL 5027791, at \*1 (Tex.App.--El Paso Oct. 29, 2021, orig. proceeding); *In re Welsh*, No. 07-21-00187-CR, 2021 WL 4861287, at \*1-2 (Tex.App.--Amarillo Oct. 19, 2021, orig. proceeding).

Next, as to the portion of the trial court’s order that overrules his counsel’s motion for habeas relief, we are still confronted with what we have said earlier about our reluctance to sanction hybrid representation. Even at that, we would review a bail related decision from a habeas corpus proceeding for an abuse of discretion. *Ex parte Cardenas*, 631 S.W.3d 758, 760 (Tex.App.--El Paso 2021, no pet.), citing *Ex parte Gill*, 413 S.W.3d 425, 428 (Tex.Crim.App. 2013). An appellate court does not substitute its judgment for that of the trial court, but decides whether the trial court’s decision was made without reference to any guiding rules or principles of law, or in other words, whether it was arbitrary or unreasonable. See *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex.Crim.App. 1990) (en banc.). Muhammad has presented neither a record, nor argument to demonstrate an abuse of discretion from the denial of the June 4, 2021 habeas application. Accordingly, we cannot consider Muhammad’s complaints about the bail ruling itself, or the subsidiary issues relating to evidence and statements made at that hearing.

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From our record, Muhammad has been incarcerated in the County jail from December 2015 up until today, save only the brief several months he was allowed to stay at the Rescue Mission. Nearly six years of *pre-trial* detention speaks for itself. The pandemic has brought with it many challenges, including the inability of trial courts to promptly try the volume of criminal cases they once did. The delay in trying cases, however, only begets more strain on the court system, as the litany of mandamus and habeas filings in this case demonstrate.<sup>1</sup> We deny the relief here, but urge

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<sup>1</sup> We could add the list of appeals Muhammad’s pro se attempt to appeal from an interlocutory order denying his motion to recuse or disqualify the trial court judge. *Muhammad v. State*, No. 08-18-00125-CR, 2018 WL 3751742,

the lower court, defense counsel, and the State's district attorney to set this matter for trial. We do not ascribe any fault for any period of delay; our limited record does not allow for, nor require that inquiry. But pandemic or no pandemic, it is time to get this case to trial.

The appeal from the order denying habeas relief is dismissed for want of jurisdiction. All pending motions are denied as moot.

JEFF ALLEY, Justice

March 1, 2022

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

(Do Not Publish)

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at \*1 (Tex.App.--El Paso Aug. 8, 2018, pet ref'd) (mem. op., not designated for publication) (appeal dismissed for want of jurisdiction as the order is one subject to interlocutory appeal). And more recently, he has filed another mandamus that current pends before this Court.