



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

HENRY LEE HUTCHINSON,	§	No. 08-22-00002-CR
Appellant,	§	Appeal from the
v.	§	54th Judicial District Court
THE STATE OF TEXAS,	§	of McLennan County, Texas
Appellee.	§	(TC# 2012-1755-C2)

OPINION

A jury found Appellant Henry Lee Hutchinson guilty of aggravated assault with a deadly weapon and assessed punishment at 75 years' imprisonment.¹ The trial court entered a judgment of Appellant's conviction that stated "N/A" regarding a deadly weapon finding. After Appellant was released on parole, the court entered a nunc pro tunc judgment of conviction that stated "Yes Not Firearm" regarding a deadly weapon finding. Due to the addition of the affirmative deadly weapon finding in the nunc pro tunc judgment, the Board of Pardons and Parole reversed its earlier parole decision and Appellant was reincarcerated. He now appeals from the entry of the nunc pro tunc judgment.

¹ This case was transferred from our sister court in Waco, and we decide it in accordance with the precedent of that court to the extent required by TEX.R.APP.P. 41.3.

In Issue One, Appellant argues that his federal constitutional rights were violated because his parole was revoked without notice, a hearing, or the ability to be represented by counsel. Appellant further alleges a violation of TEX.GOV'T CODE ANN. §§ 508.281(a) and 508.2811, which provide that a person released on parole is entitled to a hearing before revocation of parole can occur. Appellant admits, however, that this Court may only consider the propriety of the entry of the nunc pro tunc judgment and that we lack jurisdiction to consider the revocation of his parole, which is properly raised in an application for writ of habeas corpus. Appellant alternately argues in Issue Two that the doctrine of laches bars entry of the nunc pro tunc judgment due to the eight-year delay in the entry of the judgment. The State concedes that the nunc pro tunc judgment was improperly entered due to the lack of notice to Appellant, a proper hearing, or Appellant's representation by counsel in a hearing. The State also agrees to the limited relief of remanding the case to the trial court to conduct a hearing on the nunc pro tunc judgment.

Our review of the record confirms the absence of a hearing on the entry of the nunc pro tunc judgment. We thus conclude that the trial court erred by entering the judgment without affording Appellant notice of a hearing or the opportunity to be present and represented by counsel at the hearing. *See Guthrie-Nail v. State*, 506 S.W.3d 1, 2 (Tex.Crim.App. 2015), *citing Shaw v. State*, 539 S.W.2d 887, 890 (Tex.Crim.App. 1976) (“Before any unfavorable nunc pro tunc orders are entered the person convicted should be given an opportunity to be present for the hearing, represented by counsel, in order to accord him due process of law.”). However, we express no opinion and take no action on the merits of Appellant's parole revocation, which is properly raised in an application for writ of habeas corpus filed with the Texas Court of Criminal Appeals under TEX.CODE CRIM.PROC.ANN. art. 11.07. *See Garza v. State*, 435 S.W.3d 258, 264 (Tex.Crim.App. 2014) (the Court of Criminal Appeals has jurisdiction to consider habeas actions filed under article

11.07); *Ex parte Reaves*, No. 10-21-00159-CR, 2021 WL 2964694, at *1 (Tex.App.--Waco July 14, 2021, no pet.) (mem. op., not designated for publication) (intermediate courts of appeals lack jurisdiction to consider post-conviction habeas actions filed under article 11.07).

Appellant's Issue One is sustained insofar as it complains of the lack of notice and opportunity to participate in the entry of the nunc pro tunc judgment. Having sustained Issue One, we need not reach Issue Two. We reverse the nunc pro tunc judgment and sentence and remand this case for the limited purpose of conducting a hearing on the nunc pro tunc judgment.

JEFF ALLEY, Justice

Date October 14, 2022

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

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