

Dismiss and Opinion Filed September 18, 2013.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-13-01234-CR

**AARON MALONE, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 2
Dallas County, Texas
Trial Court Cause No. F08-39160-I**

MEMORANDUM OPINION

Before Justices O'Neill, Lang-Miers, and Evans
Opinion by Justice Evans

Aaron Malone was convicted of aggravated sexual assault with a deadly weapon and sentenced to sixty year's imprisonment. The conviction was affirmed on direct appeal. *Malone v. State*, No. 05-11-00157-CR, 2013 WL 427354 (Tex. App.—Dallas Feb. 5, 2013, no pet.) (not designated for publication). On August 8, 2013, appellant filed a pro se motion for a judgment nunc pro tunc seeking to have the affirmative deadly weapon finding deleted from the trial court's judgment. The trial court denied appellant's motion by written order on August 15, 2013, and this appeal followed.

“Jurisdiction concerns the power of a court to hear and determine a case.” *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). The jurisdiction of an appellate court must be legally invoked, and if not, the power of the court to act is as absent as if it did not exist. *See id.*

at 523. As a general rule, an appellate court may consider appeals by criminal defendants only after conviction. *Wright v. State*, 969 S.W.2d 588, 589 (Tex. App.—Dallas 1998, no pet.). A court of appeals has no jurisdiction over an appeal absent a written judgment or an appealable order. *See Gutierrez v. State*, 307 S.W.3d 318, 321 (Tex. Crim. App. 2010); *Nikrasch v. State*, 698 S.W.2d 443, 450 (Tex. App.—Dallas 1985, no pet.).

An order denying a motion seeking nunc pro tunc relief is not appealable. *See Sanchez v. State*, 112 S.W.3d 311, 312 (Tex. App.—Corpus Christi 2003, no pet.) (per curiam); *Everett v. State*, 82 S.W.3d 735 (Tex. App. —Waco 2002, pet. ref'd); *Allen v. State*, 20 S.W.3d 164, 165 (Tex. App.—Texarkana 2000, no pet.). *See also State v. Ross*, 953 S.W.2d 748, 751–52 (Tex. Crim. App. 1997) (suggesting mandamus as way to seek relief from order denying motion for judgment nunc pro tunc). Accordingly, we dismiss the appeal for want of jurisdiction.

/David Evans/
DAVID EVANS
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

AARON MALONE, Appellant

No. 05-13-01234-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 2, Dallas County, Texas
Trial Court Cause No. F08-39160-I.
Opinion delivered by Justice Evans,
Justices O'Neill and Lang-Miers
participating.

Based on the Court's opinion of this date, we **DISMISS** the appeal for want of jurisdiction.

Judgment entered this 18th day of September, 2013.

/David Evans/

DAVID EVANS
JUSTICE