

DISMISSED and Opinion Filed April 25, 2017.



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

No. 05-16-01257-CR

EX PARTE JUSTIN LEE GARCIA

**On Appeal from the County Criminal Court No. 2
Dallas County, Texas
Trial Court Cause No. MC-16-A5665-B**

MEMORANDUM OPINION

Before Justices Lang, Myers, and Stoddart
Opinion by Justice Stoddart

In cause no. 05-16-01256-CR, Justin Lee Garcia appeals his conviction of the offense of terroristic threat. *See* TEX. PENAL CODE ANN. § 22.07(a) (West 2011). In cause no. 05-16-01257-CR, appellant appeals the treatment of his application for writ of habeas corpus challenging his pretrial bond conditions and the constitutionality of the statute. Concluding we have no jurisdiction over cause no. 05-16-01257-CR, we dismiss the habeas appeal.

To challenge the constitutionality of the statute, appellant filed both the writ application and, in the original criminal case, a motion to dismiss or quash that mirrored the argument in the writ application. The trial court conducted a hearing on the writ application and took the matter under advisement. At a subsequent hearing, the trial court orally denied the writ application and pronounced findings of fact and conclusions of law on the record that applied to both the writ application and the motion to dismiss or quash. The trial court found the terroristic threat statute

was neither facially unconstitutional nor unconstitutionally vague and that appellant's statement, communicating a desire to kill Dallas police officers, constituted a true threat rather than protected political expression. At the same time, the trial court also denied appellant's motion to dismiss for failure to grant a speedy trial in the original criminal case.

The trial court did not, however, enter a formal written order overruling the writ application and motions to dismiss. The trial court entered in the docket sheet of the criminal prosecution case the notation "D's W. of H.C., M. for speedy trial, M. To quash/dismiss denied. FOFCOL on the record. Set for jury trial 10/18/16. JH."¹ On the bottom of an otherwise blank order appellant submitted to grant or deny the speedy trial motion, the trial court scrawled "denied—statute is not facially unconstitutional." The trial court did not sign the speedy trial order nor does the order refer in any manner to the writ application. The trial court left completely blank a proposed order appellant submitted to grant or deny the writ application.

After the clerk's record was filed, the Court transmitted a letter to the parties questioning whether the Court had jurisdiction over the habeas appeal. In a letter brief addressing the Court's jurisdictional concerns, appellant pointed out the trial court's oral findings and conclusions, the docket sheet entry, and the notation on the proposed speedy trial order. Appellant did not assert that there is a written order denying the writ application.

The pretrial habeas proceeding is a separate proceeding from the prosecution for the criminal offense. *See Greenwell v. Court of Appeals for Thirteenth Jud. Dist.*, 159 S.W.3d 645, 649 (Tex. Crim. App. 2005). An order denying relief constitutes a final judgment and makes the habeas proceeding immediately appealable. *See id.* A court of appeals has no jurisdiction over

¹ "JH" are the initials of the trial court judge, the Honorable Julia Hayes.

an appeal absent a written judgment or order. *Nikrasch v. State*, 698 S.W.2d 443, 450 (Tex. App.—Dallas 1985, no pet.); *see also Abbott v. State*, 271 S.W.3d 694, 697 (Tex. Crim. App. 2008) (right to appeal limited to appeal from final judgment). A docket sheet entry does not constitute an appealable order. *See State v. Shaw*, 4 S.W.3d 875, 878 (Tex. App.—Dallas 1999, no pet.). We conclude a notation on a blank order filed in the original criminal case that does not even reference the writ application or the habeas appeal cannot serve as an appealable order on the writ application. Because the trial court never entered an appealable order in the habeas proceeding, appellant’s notice of appeal does not confer jurisdiction upon the Court.

We dismiss the appeal for want of jurisdiction.

/Craig Stoddart/
CRAIG STODDART
JUSTICE

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

JUDGMENT

EX PARTE JUSTIN LEE GARCIA

No. 05-16-01257-CR

On Appeal from the County Criminal Court
No. 2, Dallas County, Texas
Trial Court Cause No. MC-16-A5665-B.

Opinion delivered by Justice Stoddart.
Justices Lang and Myers participating.

Based on the Court's opinion of this date, the appeal is **DISMISSED**.

Judgment entered this 25th day of April, 2017.