

Dismissed; Opinion Filed August 28, 2017.



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

No. 05-17-00885-CR

**BRITTANY GABLE, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 59th Judicial District Court
Grayson County, Texas
Trial Court Cause No. CV-17-0257**

MEMORANDUM OPINION

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

Brittany Gable filed her notice of appeal July 27, 2017, seeking to appeal the trial court's order denying her motion to withdraw her plea of nolo contendere. For the reasons that follow, we dismiss appellant's appeal for want of jurisdiction.

Appellant was charged with making an offensive gesture or display in a public place. *See* TEX. PENAL CODE ANN. § 42.01(a)(2) (West 2016). After she entered a plea of nolo contendere, the justice court found her guilty on July 18, 2014 and assessed "a fine and court costs of \$275." Nearly three years later, on June 13, 2017, appellant filed a motion to withdraw her plea of nolo contendere in the 59th Judicial District Court. Two weeks later, the district court denied her motion. Appellant filed her notice of appeal, challenging the trial court's June 27, 2017 "ORDER ON MOTION TO WITHDRW NO CONTEST PLEA."

In a criminal case, the right to appeal is a substantive right determined solely within the province of the Texas Legislature. *Bayless v. State*, 91 S.W.3d 801, 805 (Tex. Crim. App. 2002) (defendant’s right to appeal is “a statutorily created right”); *Ex parte McGregor*, 145 S.W.3d 824, 825 (Tex. App.—Dallas 2004, no pet.). As a general rule, a criminal defendant’s right to appeal is limited to appeals from final judgments. See TEX. CODE CRIM. PROC. ANN. art. 44.02 (West 2016); *State v. Sellers*, 790 S.W.2d 316, 321 n.4 (Tex. Crim. App. 1990); *McGregor*, 145 S.W.3d at 825. Appellate courts do not have jurisdiction over criminal appeals where jurisdiction has not been expressly granted to them. See *Apolinar v. State*, 820 S.W.2d 792, 794 (Tex. Crim. App. 1991); *Wright v. State*, 969 S.W.2d 588, 589 (Tex. App.—Dallas 1998, no pet.) (“Intermediate appellate courts have no jurisdiction to review interlocutory orders absent express authority.”). Absent a timely appeal of a final conviction or an order deferring adjudication of guilt, we lack jurisdiction over a trial court’s interlocutory order denying a motion to withdraw a nolo contendere plea. See *Rabbani v. State*, 494 S.W.3d 778, 781 (Tex. App.—Houston [14th Dist.] 2016, pet. ref’d) (holding court of appeals had no jurisdiction over appeal of denial of motion to withdraw guilty plea).

Here, appellant pleaded nolo contendere in 2014 and was found guilty in justice court. Three years later, she filed a motion in district court, seeking to withdraw her plea and the district court denied it. Because we do not have jurisdiction over an interlocutory trial court order denying a motion to withdraw a plea, we dismiss this appeal.

Do Not Publish
TEX. R. APP. P. 47.2(b)
170885F.U05

/Craig Stoddart/
CRAIG STODDART
JUSTICE



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

JUDGMENT

BRITTANY GABLE, Appellant

No. 05-17-00885-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 59th Judicial District
Court, Grayson County, Texas

Trial Court Cause No. CV-17-0257.

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

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

Judgment entered this 28th day of August, 2017.