DISMISS; and Opinion Filed December 28, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-01425-CR

DAVID DEWAYNE HOLLY, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 2
Dallas County, Texas
Trial Court Cause No. F93-43645-RI

MEMORANDUM OPINION

Before Justices Bridges, Myers, and Schenck
Opinion by Justice Myers

David Dewayne Holly was charged with capital murder, specifically causing the death of William E. Portwood while in the course of committing or attempting to commit robbery of Portwood. After the jury found appellant guilty, the trial court assessed punishment at life in prison. The judgment did not include an affirmative finding on use of a deadly weapon.

Appellant filed a timely appeal with this Court in which he contended the evidence was insufficient to support his conviction and that the trial court erred by failing to suppress certain evidence. We affirmed his conviction. *Holly v. State*, No. 05-94-00148-CR, 1996 WL 29302 (Tex. App.—Dallas Jan. 23, 1996, pet. ref'd) (not designated for publication). After the Texas Court of Criminal Appeals denied appellant's petition for discretionary review, our mandate issued on July 8, 1996.

On December 13, 2017, appellant filed, with this Court, a petition for reformation of the judgment and sentence. In his petition, appellant complains his parole eligibility date is incorrect. He argues that although the judgment does not contain a finding that he used or exhibited a deadly weapon during commission of the offense, the TDCJ-CID time section officials are calculating his parole eligibility date as though the judgment did have such an affirmative finding.

Rules 21 and 22 of the Texas Rules of Appellate Procedure provide the guidelines for filing a motion to challenge or correct a judgment in a criminal case. *See* TEX. R. APP. P. 21 (motion for new trial); 22 (motion in arrest of judgment). Under rule 21.4(a), a defendant may "file a motion for new trial before, but no later than 30 days after, the date when the trial court imposes or suspends sentence in open court." TEX. R. APP. P. 21.4. Likewise, a motion in arrest of judgment must be filed no later than 30 days after the date the trial court imposes or suspends sentence in open court. TEX. R. APP. P. 22.3. The defendant must file the motion in the trial court, and it is the trial court that rules on the motion. See TEX. R. APP. P. 21.6; 21.8; 21.9; 22.3; 22.4. The deadlines set out in rules 21 and 22 have jurisdictional significance; the motions are purely statutory remedies, and the movant must strictly adhere to the terms of the statute to take advantage of this remedy. *Drew v. State*, 743 S.W.2d 207, 223 (Tex. Crim. App. 1987). "When jurisdiction with respect to a particular matter is derived wholly from statute, the statutory provisions are mandatory and exclusive and must be complied with in all respects, and the court in exercising its particular authority is a court of limited jurisdiction." *Id.* Jurisdiction cannot be "substantially" invoked; it either attaches or it does not. *Ex parte Kirby*, 626 S.W.2d 533, 534 (Tex. Crim. App. 1981). If there is no jurisdiction, "the power of the court to act is as absent as if it did not exist." *Ex parte Caldwell*, 383 S.W.2d 587, 589 (Tex. Crim. App. 1964).

We lack jurisdiction when the trial court has not entered any appealable orders. *McKown v. State*, 915 S.W.2d 160, 160 (Tex. App.–Fort Worth 1996, no pet.) ("Because we find that this

appeal does not concern an appealable order, we dismiss this appeal for want of jurisdiction."); *see* TEX. R. APP. P. 25.2, 26.2. And, as a general rule, we do not have jurisdiction over proceedings related to a collateral attack of a final felony conviction. *See, e.g., Olivo v. State*, 918 S.W.2d 519, 525 n.8 (Tex. Crim. App. 1996) (exclusive post-conviction remedy with regard to final felony convictions is through writ of habeas corpus); *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding) (court of criminal appeals is "the only court with jurisdiction in final post-conviction felony proceedings").

Here, the trial court imposed judgment on January 12, 1994. Appellant had until February 11, 1994 to file a motion for new trial or motion to reform the judgment in the trial court. In 2017, appellant filed the motion with this Court. His motion is untimely and filed in the wrong court. *See* TEX. R. APP. P. 21.4, 21.6, 22.1, 22.3.

And to the extent appellant seeks a post-conviction felony challenge, we lack jurisdiction over post-conviction writs of habeas corpus. *See Olivo*, 918 S.W.2d at 525 n.8; *Ater*, 802 S.W.2d at 243.

We dismiss this appeal for lack of jurisdiction.

/Lana Myers/
LANA MYERS
JUSTICE

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

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DAVID DEWAYNE HOLLY, Appellant	On Appeal from the Criminal District Court No. 2, Dallas County, Texas
No. 05-17-01425-CR V.	Trial Court Cause No. F93-43645-RI.
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Myers, Justices Bridges and Schenck participating.

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

Judgment entered this 28th day of December, 2017.