

DISMISSED and Opinion Filed November 4, 2022



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

No. 05-22-01115-CR

**LAVACE DURELL MORGAN AKA LAVANCE DURELL JENKINS,
Appellant**

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 354th Judicial District Court
Hunt County, Texas
Trial Court Cause No. 21838**

MEMORANDUM OPINION

Before Justices Molberg, Partida-Kipness, and Carlyle
Opinion by Justice Molberg

On October 18, 2022, Lavace Durell Morgan aka Lavance Durell Jenkins filed a pro se “Motion for Appointment of Counsel on Nunc Pro Tunc and Notice to Appeal Nunc Pro Tunc.” The notice of appeal portion of the document states the trial court “has entered a Judgment to the Nunc Pro Tunc and defendant seeks to appeal the decision.”

On October 24, 2022, the Court entered an order observing that the trial court’s online docket sheet shows appellant filed a motion for nunc pro tunc relief on July 28, 2022, but it does not show any ruling on the motion. The Court ordered

the Hunt County District Clerk to review its records to determine if the trial court had entered a judgment or written order ruling on appellant's motion and then file either a verification that the trial court has not entered a judgment or written order or else a clerk's record containing the documents relevant to review appellant's appeal.

On October 26, 2022, the district clerk filed a clerk's record containing the Court's October 24, 2022 order, an order transferring the case from the 354th Judicial District Court to the 196th Judicial District Court, a copy of the motion for judgment nunc pro tunc, and appellant's notice of appeal.

The order of transfer is signed by Keli M. Aiken, the presiding judge of the 354th Judicial District Court. The order of transfer is also signed as accepted by J. Andrew Bench, the presiding judge of the 196th Judicial District Court, although it contains a clerical error describing him as being presiding judge of the 354th Judicial District Court. On the copy of appellant's motion in the clerk's record, we observe that at the top of the first page of the motion for nunc pro tunc judgment, there is a handwritten statement reading "No Action Taken--JAB" followed by a handwritten date for August 2022.

This Court has no jurisdiction to entertain an appeal unless the trial court has entered a judgment or appealable order. *See* TEX. R. APP. P. 26.2(a)(1); *State v. Sanavongxay*, 407 S.W.3d 252, 259 (Tex. Crim. App. 2012); *Henderson v. State*, 153 S.W.3d 735, 735–36 (Tex. App.—Dallas 2005, no pet.). The entry of a nunc pro

tunc judgment is an appealable order. *Blanton v. State*, 369 S.W.3d 894, 904 (Tex. Crim. App. 2012). In contrast, the trial court’s denial of relief or refusal to rule on a motion for judgment nunc pro tunc does not create an appealable order that may serve as a basis for appellate jurisdiction. *See Desilets v. State*, 495 S.W.3d 553, 554 (Tex. App.—Beaumont 2016, no pet.) (dismissing appeals from order denying request for judgments nunc pro tunc); *Sanchez v. State*, 112 S.W.3d 311 (Tex. App.—Corpus Christi-Edinburg 2003, no pet.) (per curiam) (same); *see also Lopez v. State*, No. 05-19-00096-CR, 2019 WL 1486919, at *1 (Tex. App.—Dallas Apr. 4, 2019, no pet.) (mem. op., not designated for publication) (dismissing appeal where record showed trial court had not ruled on motion seeking nunc pro tunc relief).

Because the record in this case shows the trial court chose to take no action on appellant’s motion and did not sign an appealable order, we have no jurisdiction to entertain appellant’s appeal. *See Henderson*, 153 S.W.3d at 735–36; *Desilets*, 495 S.W.3d at 554; *see also Lopez*, 2019 WL 1486919, at *1.

We dismiss the appeal for want of jurisdiction.

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TEX. R. APP. P. 47.2(b)

/Ken Molberg//
KEN MOLBERG
JUSTICE



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

JUDGMENT

LAVACE DURELL MORGAN
AKA LAVANCE DURELL
JENKINS, Appellant

No. 05-22-01115-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 354th Judicial
District Court, Hunt County, Texas
Trial Court Cause No. 21838.
Opinion delivered by Justice
Molberg. Justices Partida-Kipness
and Carlyle participating.

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

Judgment entered this 4th day of November, 2022.