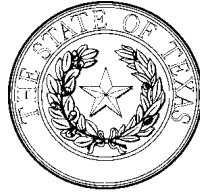


Opinion issued September 26, 2013



In The
Court of Appeals
For The
First District of Texas

NO. 01-13-00667-CR

CHARLES LEE HAWKINS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 479960**

MEMORANDUM OPINION

Appellant, Charles Lee Hawkins, attempts to appeal from the trial court's order denying his request for appointed counsel to assist in filing for post-conviction DNA testing under Texas Code of Criminal Procedure article 64.01.

See TEX. CODE CRIM. PROC. ANN. art. 64.01 (West Supp. 2012). We dismiss the appeal.

“[A] motion for appointed counsel is a preliminary matter that precedes the initiation of Chapter 64 proceedings.” *Gutierrez v. State*, 307 S.W.3d 318, 323 (Tex. Crim. App. 2010). “At this stage, a convicted person has only contemplated the filing of a motion for DNA testing.” *Id.* (citing TEX. CODE CRIM. PROC. ANN. art. 64.01(c) (providing that defendant must inform trial court that he “wishes” to submit motion for DNA testing)). Thus, a trial court’s order denying a request for the appointment of counsel under article 64.01(c) is not an immediately appealable order. *Id.* Any alleged error made by the trial court in refusing to appoint counsel must be raised in an appeal from the final order denying DNA testing. *Id.* If a reviewing court determines that the trial court erred by failing to appoint counsel, the case is then remanded to the trial court for the appellant to file a subsequent motion for DNA testing with the assistance of counsel. *Id.*

Here, because appellant attempts to appeal the trial court’s denial of his motion for the appointment of counsel, rather than a final order denying a motion for DNA testing under article 64.01, we lack jurisdiction to consider the appeal. *See id.*

Accordingly, we dismiss this appeal for want of jurisdiction. *See id.*; *see also* TEX. R. APP. P. 43.2(f). We dismiss any pending motions as moot.

PER CURIAM

Panel consists of Justices Keyes, Higley, and Massengale.

Do not publish. TEX. R. APP. P. 47.2(b).