

Opinion issued May 22, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-18-00207-CR

MICHAEL LAVON GIPSON, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Case No. 905482

MEMORANDUM OPINION

Appellant, Michael Lavon Gipson, was convicted on May 28, 2003 for the felony offense of aggravated robbery and sentenced to thirty-five years' imprisonment. Our court affirmed the trial court's judgment in 2004. *See Gipson v. State*, No. 01-03-00581-CR, 2004 WL 1065428 (Tex. App.—Houston [1st Dist.]

May 13, 2004, pet. ref'd) (mem. op., not designated for publication). On October 30, 2017, Gipson filed a pro se “Motion for New Trial on Newly Discovered Evidence & Actual Innocence.” On December 4, 2017, Gipson filed a related pro se “Motion to Abate & Remand for Appeal for Out-of-time Motion for New Trial on Newly Discovered Evidence.” The trial court did not rule on the motions. On February 26, 2018, Gipson filed a notice of appeal requesting that our court grant his “out-of-time motion for new trial.” We dismiss the appeal for lack of jurisdiction.

Appeals in criminal cases are permitted only when they are specifically authorized by statute. *See State ex rel. Lykos v. Fine*, 330 S.W.3d 904, 915 (Tex. Crim. App. 2011); TEX. CODE CRIM. PROC. art. 44.02. Generally, a criminal defendant may appeal only from a final judgment. *See State v. Sellers*, 790 S.W.2d 316, 321 n. 4 (Tex. Crim. App. 1990). Courts of appeals do not have jurisdiction to review interlocutory orders in a criminal appeal unless that jurisdiction has been expressly granted by statute. *See Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014); *Apolinar v. State*, 820 S.W.2d 792, 794 (Tex. Crim. App. 1991). No Texas statute authorizes a direct appeal from the denial of a motion for new trial independently of the appeal of an underlying conviction. *Billiot v. State*, No. 02–11–00298–CR, 2011 WL 4469232, at *1 (Tex. App.—Fort Worth Aug. 30, 2011, pet. ref'd) (mem. op., not designated for publication) (citing TEX. CODE CRIM. PROC. art. 44.02). In this case, we lack jurisdiction over this appeal because Gipson does not

appeal from any final judgment or appealable interlocutory order that could serve as the basis for an appeal. *See id.* (dismissing appeal from trial court order denying motion for new trial for lack of jurisdiction).

The trial court likewise lacked jurisdiction to entertain Gipson's untimely motion for new trial. Rule 21.4 of the Texas Rules of Appellate Procedure requires that a motion for new trial be filed no later than thirty days after the date the trial court imposes or suspends sentence in open court. TEX. R. APP. P. 21.4. This includes motions for new trial based on newly discovered evidence. *See Manzella v. State*, No. 01-13-00169-CR, 2014 WL 3778686, at *4 (Tex. App.—Houston [1st Dist.] July 31, 2014, no pet.) (mem. op., not designated for publication); *Perez v. State*, 261 S.W.3d 760, 771 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd); *Kim v. State*, No. 14-02-00738-CR, 2003 WL 253360, at *1 (Tex. App.—Houston [14th Dist.] Feb. 6, 2003, no pet.) (mem. op., not designated for publication). Trial courts lack jurisdiction to rule on an out-of-time motion for new trial. *State ex rel. Holmes v. Third Court of Appeals of Tex.*, 860 S.W.2d 873, 876 n.2 (Tex. Crim. App. 1993); *Beathard v. State*, 767 S.W.2d 423, 433 (Tex. Crim. App. 1989). The trial court therefore had no jurisdiction to rule on Gipson's out-of-time motion for new trial.

Finally, to the extent that Gipson requests that this court issue a writ of habeas corpus, we lack jurisdiction to grant the relief requested. In criminal matters, we do not have original habeas corpus jurisdiction. *See Ashorn v. State*, 77 S.W.3d 405,

409 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd); *Ex parte Denby*, 627 S.W.2d 435, 435 (Tex. App.—Houston [1st Dist.] 1981, orig. proceeding); *see also Chavez v. State*, 132 S.W.3d 509, 510 (Tex. App.—Houston [1st Dist.] 2004, no pet.). Only the Court of Criminal Appeals has jurisdiction to grant post-conviction habeas relief from a final felony conviction. *See* TEX. CODE CRIM. PROC. art. 11.07, § 3.

Accordingly, because a final judgment or appealable interlocutory order by the trial court is a prerequisite to this Court's appellate jurisdiction, we dismiss this appeal for lack of jurisdiction. TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss any pending motions as moot.

PER CURIAM

Panel consists of Justices Bland, Lloyd, and Caughey.

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