

Opinion issued July 30, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00933-CR

NO. 01-19-00935-CR

NO. 01-19-00936-CR

NO. 01-19-00937-CR

ASHFORD BERNARD SMITH, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 209th District Court
Harris County, Texas
Trial Court Case Nos. 1520594, 1520595, 1538806, 1597692¹**

¹ Appellate cause no. 01-19-00933-CR; trial court cause no. 1538806. Appellate cause no. 01-19-00935-CR; trial court cause no. 1597692. Appellate cause no. 01-19-00936-CR; trial court cause no. 1520594. Appellate cause no. 01-19-00937-CR; trial court cause no. 1520595.

MEMORANDUM OPINION

During a pretrial hearing on October 23, 2019, appellant, Ashford Bernard Smith, made a verbal motion to dismiss his court-appointed counsel, which was denied by the trial court. Appellant has filed a pro se notice of appeal from the trial court's "denial to dismiss [court-appointed] counsel" in these four causes.

We dismiss the appeals for lack of jurisdiction.

This Court's jurisdiction over criminal appeals is conferred by statute, and "a party may appeal only from judgments of conviction or interlocutory orders authorized as appealable." *See Estrada v. State*, No. 01-18-00645-CR, 2018 WL 4190058, at *1 (Tex. App.—Houston [1st Dist.] Aug. 31, 2018, no pet.) (mem. op., not designated for publication); *see also* TEX. CODE CRIM. PROC. art. 44.02. "The standard for determining jurisdiction is not whether the appeal is precluded by law, but whether the appeal is authorized by law." *Abbott v. State*, 271 S.W.3d 694, 696–97 (Tex. Crim. App. 2008).

The statute authorizing trial courts to appoint counsel for indigent criminal defendants does not authorize interlocutory appeals of a trial court's denial of a defendant's request to dismiss his court-appointed counsel. *See* TEX. CODE CRIM. PROC. art. 26.04; *Miears v. State*, No. 04-10-00451-CR, 2010 WL 3572324, at *1 (Tex. App.—San Antonio Sept. 15, 2010, pet ref'd) (mem. op., not designated for publication) ("Nothing in the language of article 26.04, or any other article, of the

Code of Criminal Procedure provides an interlocutory right to appeal from a trial court’s denial of a motion to dismiss appointed counsel.”); *Locke v. State*, No. 03-19-00839-CR, 2020 WL 699530, at *1 (Tex. App.—Austin Feb. 12, 2020, no pet.) (mem. op., not designated for publication) (dismissing appeal from trial court’s denial of motion to dismiss court-appointed counsel for want of jurisdiction); *see also Estrada*, 2018 WL 4190058, at *1–2 (same). Absent such authorization from the Texas Legislature, we lack jurisdiction over these interlocutory appeals. *See Mears*, 2010 WL 3572324, at *1 (“The courts of appeals do not have jurisdiction to review interlocutory orders in a criminal appeal absent express statutory authority.”).

Accordingly, we reinstate the appeals² and dismiss the appeals for lack of jurisdiction. *See* TEX. R. APP. P. 43.2(f). We dismiss any pending motions as moot.

PER CURIAM

Panel consists of Justices Keyes, Kelly, and Landau.

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

² After appellant failed to timely file his brief, on May 5, 2020, this Court abated these appeals and ordered the trial court to hold a hearing to determine whether appellant wished to continue prosecution of his appeals. Because we lack jurisdiction over these appeals, we reinstate these cases on the Court’s active docket and dismiss them.