

Opinion issued May 10, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00208-CR

NO. 01-22-00209-CR

JOSEPH T. ROBERTS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 344th District Court
Chambers County, Texas
Trial Court Case Nos. 21DCR0095 and 21DCR0097**

MEMORANDUM OPINION

Joseph T. Roberts filed a document entitled “Direct Appeal” that included arguments concerning certain alleged trial court actions.¹ Because this Court had no pending appeals in which to file this document, the Court construed the document to be a petition for writ of mandamus concerning both trial court causes 21DCR0095 and 21DCR0097. Ten days later, Roberts filed a motion to amend, stating that he did not intend to file mandamus petitions but instead wished to file direct appeals. The motion did not state what order or judgment from which Roberts was appealing, but the cover letter for the motion mentioned that the trial court had committed him to the State hospital.

By letter issued on March 18, 2022, this Court forwarded Roberts’ letter to the Chambers County District Clerk, advising that Roberts appeared to be attempting to file a notice of appeal. On March 21, 2022, this Court received the letters of assignment of the appeals from the Chambers County District Clerk and these two appeals were filed in these appellate cause numbers: 01-22-00208-CR and 01-22-00209-CR. The clerk’s record was filed on April 18, 2022. *See* TEX. R. APP. P. 35.2(a).

The clerk’s record contains an order signed by the trial court on February 17, 2022, finding that the court-appointed expert, Dr. Kit W. Harrison, was qualified to

¹ The underlying cases are *The State of Texas v. Joseph R. Roberts*, cause numbers 21DCR0095 and 21DCR0097, pending in the 344th District Court of Chambers County, Texas, the Honorable Chap B. Cain presiding.

evaluate Roberts regarding his competency, and that, based on Dr. Harrison's detailed report, the Court found that all necessary criteria were met under Article 46B.005 of the Texas Code of Criminal Procedure to find that Roberts was "incompetent, to wit: does not have the present ability to consult with his attorney with a reasonable degree of rational understanding; or rational as well as factual understanding of the proceedings against him." Based on this, the trial court ordered that Roberts was incompetent to stand trial on February 17, 2022 and ordered Roberts committed to and confined to a facility designated by the Department of State Health Services for a period not to exceed 120 days.

Roberts is attempting to appeal from this February 17, 2022 order of commitment. But in criminal cases, an intermediate appellate court has jurisdiction to consider appeals only from a judgment of conviction or other interlocutory orders for which an appeal is permitted by statute or the constitution. *See* TEX. CODE CRIM. PROC. art. 44.02.

Article 46B.005 permits the trial court to determine whether a defendant is incompetent to stand trial. *See* TEX. CODE CRIM. PROC. art. 46B.005. "Neither the state nor the defendant is entitled to make an interlocutory appeal relating to a determination or ruling under Article 46B.005." TEX. CODE CRIM. PROC. art. 46B.011. Because an appeal from a ruling under Article 46B.005 is forbidden by statute, the trial court's February 17, 2022 order finding Roberts incompetent to

stand trial is not an appealable order. *See Ortega v. State*, 82 S.W.3d 748, 749–50 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (dismissing appeal from interlocutory order finding defendant incompetent to stand trial because order is not appealable); *Annis v. State*, No. 01-19-00385-CR, 2019 WL 3819553, at *1 (Tex. App.—Houston [1st Dist.] Aug. 15, 2019, no pet.) (mem. op.) (dismissing appeal based on statute prohibiting appeal from temporary commitment order finding defendant incompetent to stand trial).

Because the trial court’s February 17, 2022 order finding Roberts incompetent to stand trial is not appealable, we dismiss these appeals.

PER CURIAM

Panel consists of Justices Landau, Hightower, and Rivas-Molloy.

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