

Opinion issued December 6, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00473-CR

EX PARTE KENDALL BELL, Appellant

**On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Case No. 1766307**

MEMORANDUM OPINION

Appellant, Kendall Bell, challenges the trial court's order denying his second amended application for writ of habeas corpus.¹ In his sole issue, appellant contends that the trial court erred in denying him habeas relief.

We dismiss the appeal for lack of jurisdiction.

¹ See TEX. R. APP. P. 31.

Background²

After a juvenile court waived jurisdiction³ and certified appellant to stand trial as an adult in a criminal district court, appellant, without an agreed punishment recommendation from the State, pleaded guilty to the felony offense of aggravated robbery.⁴ The criminal district court then deferred adjudication of appellant's guilt and placed him on community supervision for six years. The State, alleging certain violations of the conditions of appellant's community supervision, subsequently moved to adjudicate appellant's guilt. After a hearing, on May 13, 2015, the criminal district court found an allegation true, found appellant guilty, and assessed his punishment at confinement for twenty years. Appellant filed a notice of appeal challenging the trial court's judgment adjudicating his guilt and assessing his punishment at confinement for twenty years (the "direct appeal").

In the direct appeal, appellant asserted that the juvenile court erred in transferring his case to the criminal district court and the evidence was insufficient to support the criminal district court's finding that he violated a condition of his community supervision. On December 15, 2016, this Court, relying on *Moon v.*

² See *Ex parte Joyner*, 367 S.W.3d 737, 738 (Tex. App.—Houston [14th Dist.] 2012, no pet.) ("An appellate court may take judicial notice of its own records in a related proceeding involving the same or nearly the same parties.").

³ See TEX. FAM. CODE ANN. § 54.02(a).

⁴ See TEX. PENAL CODE ANN. § 29.03(a), (b); see also *id.* § 29.02(a).

State, 451 S.W.3d 28 (Tex. Crim. App. 2014), *overruled by Ex parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021), held that the juvenile court erred by “waiving jurisdiction and transferring [appellant’s] case to the criminal district court.” *Bell v. State*, 512 S.W.3d 553, 554–60 (Tex. App.—Houston [1st Dist.] 2016) (*Bell I*) (concluding, based on now-overruled *Moon*, “the juvenile court did not provide sufficient case-specific findings to support its waiver of jurisdiction” and holding “[the] juvenile court abused its discretion by waiving jurisdiction and transferring [appellant’s] case to the criminal district court”), *rev’d on other grounds*, 515 S.W.3d 900 (Tex. Crim. App. 2017) (*Bell II*). Accordingly, the Court vacated the juvenile court’s transfer order and the criminal district court’s judgment adjudicating appellant’s guilt, dismissed the criminal district court case, and remanded appellant’s case to the juvenile court for further proceedings consistent with this Court’s opinion. *Bell I*, 512 S.W.3d at 560.

On January 30, 2017, the State, in the direct appeal, filed a petition for discretionary review with the Texas Court of Criminal Appeals, arguing, in part, that this Court lacked jurisdiction to consider appellant’s complaint that the juvenile court erred in transferring his case to the criminal district court because appellant did not raise his complaint until after the criminal district court entered its judgment

adjudicating appellant’s guilt.⁵ *See Bell II*, 515 S.W.3d at 901 (“The State has filed a petition for discretionary review challenging appellant’s ability to attack his transfer order on appeal from the adjudication of his guilt. The State maintains that a defendant cannot attack the original proceedings on appeal from an order that adjudicated guilt after a revocation of community supervision. The State’s argument suggests that the court of appeals did not have jurisdiction to address the merits of appellant’s c[omplaint]” (internal citations omitted)). Because the State had not raised its jurisdictional argument in this Court, the Texas Court of Criminal Appeals, on March 22, 2017, granted the State’s petition in part, vacated this Court’s judgment, reinstated appellant’s conviction, and remanded the direct appeal so that this Court could consider the State’s jurisdictional issue “in the first instance.”⁶ *Id.*; *see also In re Bell*, 527 S.W.3d 474, 475 (Tex. App.—Houston [1st Dist.] 2017, orig. proceeding) (noting Texas Court of Criminal Appeals reinstated appellant’s conviction in March 2017).

⁵ The State also asserted that (1) this Court misinterpreted the Texas Court of Criminal Appeals’s now-overruled opinion in *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), *overruled by Ex parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021), and “erroneously held that the [juvenile court’s] transfer order . . . was deficient” and (2) the Texas Court of Criminal Appeals’s *Moon* opinion needed to be “reexamined.” *Bell v. State*, No. PD-1383-18, 2021 WL 2677442, at *1 n.1 (Tex. Crim. App. June 30, 2021) (not designated for publication) (*Bell IV*) (noting “two other grounds” raised by State in petition for discretionary review filed on January 30, 2017).

⁶ The Texas Court of Criminal Appeals’s mandate, vacating this Court’s judgment and remanding appellant’s direct appeal to this Court, issued on May 17, 2017.

On remand in the direct appeal, this Court addressed whether it had jurisdiction to hear appellant’s complaint that the juvenile court erred in transferring appellant’s case to the criminal district court even though appellant “did not raise his [complaint] when the [criminal district] court entered its order of deferred adjudication” and instead raised his complaint on appeal from the criminal district court’s judgment adjudicating appellant’s guilt and assessing his punishment at confinement for twenty years. *Bell v. State*, 569 S.W.3d 241, 243–47 (Tex. App.—Houston [1st Dist.] 2018) (*Bell III*), *rev’d on other grounds*, No. PD-1383-18, 2021 WL 2677442, at *1 (Tex. Crim. App. June 30, 2021) (not designated for publication) (*Bell IV*). After concluding that this Court had jurisdiction to consider appellant’s complaint, the Court adopted its previous opinion in *Bell I*, which relied on the Texas Court of Criminal Appeals’s now-overruled *Moon* opinion, and held that the juvenile court erred by “waiving jurisdiction and transferring [appellant’s] case to the criminal district court.” *Bell III*, 569 S.W.3d at 243–47; *see also Bell I*, 512 S.W.3d at 554–60. On November 27, 2018, the Court again vacated the juvenile court’s transfer order and the criminal district court’s judgment adjudicating appellant’s guilt, dismissed the criminal district court case, and remanded appellant’s case to the juvenile court for further proceedings consistent with its opinion. *Bell I*, 512 S.W.3d at 560; *see also Bell III*, 569 S.W.3d at 243, 247 (adopting this Court’s prior opinion in *Bell I*).

On December 21, 2018, the State filed another petition for discretionary review with the Texas Court of Criminal Appeals in the direct appeal, asserting that this Court lacked jurisdiction to address appellant’s complaint that the juvenile court erred in transferring appellant’s case to the criminal district court, which the Court of Criminal Appeals granted. *Bell IV*, 2021 WL 2677442, at *1 (“On remand, the court of appeals concluded that it had jurisdiction to consider [a]ppellant’s *Moon* challenge. It then adopted its prior holding finding the transfer order defective, vacating the conviction, and remanding the case to the juvenile court. The State again petitioned for discretionary review, and we granted the State’s petition to consider whether the court of appeals correctly held that it had jurisdiction to consider [a]ppellant’s challenge to his transfer order at this procedural juncture.” (internal citations omitted)). However, after granting the State’s petition for discretionary review, the Texas Court of Criminal Appeals issued an opinion in *Ex parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021), which “disavowed” and overruled *Moon*—the Texas Court of Criminal Appeals’s opinion relied on by this Court in *Bell I* and *Bell III*. *Bell IV*, 2021 WL 2677442, at *1. Because this Court “did not have the benefit of [the Texas Court of Criminal Appeals’s *Ex parte Thomas* [opinion]]” when it issued *Bell I* and *Bell III*, on June 30, 2021, the Texas Court of Criminal Appeals vacated this Court’s judgment, reinstated appellant’s conviction, and remanded appellant’s direct appeal to this Court “for further

consideration and disposition of [a]ppellant’s issues in a manner consistent with [the Court of Criminal Appeals’s recent decision in *Ex parte*] *Thomas*.”⁷ *Id.*; *see also In re Bell*, 527 S.W.3d at 475 (noting when Texas Court of Criminal Appeals reversed this Court’s judgment it reinstated appellant’s conviction).

While the direct appeal was pending in this Court on a second remand from the Texas Court of Criminal Appeals, on April 19, 2022, appellant filed a second amended application for writ of habeas corpus in the criminal district court, asserting that he was being “illegally restrained in the Harris County Jail,” and had been since February 10, 2022, when “he was arrested on an unlawful alias capias issued in 2017.” Appellant sought habeas corpus relief purportedly under Texas Code of Criminal Procedure articles 11.05 and 11.08.⁸

In his second amended application for writ of habeas corpus, appellant stated that he had participated in an aggravated robbery in 2016 when he was a teenager. After the juvenile court waived jurisdiction and transferred appellant’s case to the criminal district court, appellant pleaded guilty to the felony offense of aggravated robbery. The criminal district court then deferred adjudication of appellant’s guilt and placed appellant on community supervision. After the State moved to adjudicate

⁷ The Texas Court of Criminal Appeals’s mandate, vacating this Court’s judgment and remanding appellant’s direct appeal to this Court, issued on July 26, 2021.

⁸ *See generally* TEX. CODE CRIM. PROC. ANN. arts. 11.05, 11.08.

appellant's guilt, alleging that appellant had violated certain conditions of his community supervision, the criminal district court found an allegation true, found appellant guilty, and assessed his punishment at confinement for twenty years. Appellant then filed a notice of appeal, which was assigned to this Court.

Appellant further explained that on December 15, 2016, this Court, in *Bell I*, vacated the juvenile court's transfer order and the criminal district court's judgment adjudicating appellant's guilt, dismissed the criminal district court case, and remanded appellant's case to the juvenile court for further proceedings consistent with the Court's opinion. The juvenile court then, on January 30, 2017, "set [appellant's] bond at \$50,000[]," which appellant posted, and appellant was released from custody. But when the Texas Court of Criminal Appeals granted the State's petition for discretionary review, vacated this Court's judgment, reinstated appellant's conviction, and remanded appellant's direct appeal to this Court, the State requested that the juvenile court "vacate[] the bond that was set in January [2017]," which the juvenile court did. On May 19, 2017, the criminal district court "issued an alias *capias* for [appellant's] arrest." However, the "*capias* was not executed" until February 10, 2022 when appellant was ultimately arrested based on the purportedly "unlawful *alias capias*."

In his second amended application for writ of habeas corpus, appellant requested that the criminal district court "issue a writ of habeas corpus directing the

Harris County Sheriff to return him to [the criminal district] court for a hearing on his [habeas] claim[] and[] after the hearing, to order his immediate release [from confinement].”

On May 3, 2022, the criminal district court held a hearing on appellant’s second amended application for writ of habeas corpus and denied his application. On May 13, 2022, appellant filed his notice of appeal from the criminal district court’s denial of his second amended application for writ of habeas corpus, which was assigned to this Court (the “habeas appeal”).

On July 21, 2022, while appellant’s habeas appeal was pending, this Court issued an opinion in the direct appeal. *See Bell v. State*, 649 S.W.3d 867 (Tex. App.—Houston [1st Dist.] 2022, pet. filed) (*Bell V*). In its opinion, this Court addressed whether the juvenile court erred in transferring appellant’s case to the criminal district court and whether the evidence was insufficient to support the criminal district court’s finding that appellant had violated a condition of his community supervision. *See id.* at 873, 885–901. In the direct appeal, the Court held that the juvenile court did not abuse its discretion when it transferred appellant’s case to the criminal district court and the criminal district court did not err in finding that appellant violated a condition of his community supervision and did not err in adjudicating appellant’s guilt. *See id.* at 885–901. This Court affirmed the criminal

district court’s judgment adjudicating appellant’s guilt and assessing his punishment at confinement for twenty years.⁹ *See id.* at 901.

Mootness

In his sole issue on appeal, appellant argues that the trial court erred in denying him habeas relief because “the State unlawfully arrest[ed] [appellant] in February 2022” based on an unlawful *capias* and he is being “illegally restrained.”

“Courts always have jurisdiction to determine their own jurisdiction.” *Harrell v. State*, 286 S.W.3d 315, 317 (Tex. 2009) (internal quotations omitted). “Habeas corpus is by definition an extraordinary writ in which the restraint of one’s liberty is challenged as illegal.” *Saucedo v. State*, 795 S.W.2d 8, 9 (Tex. App.—Houston [14th Dist.] 1990, no pet.); *see also McGuire v. State*, 493 S.W.3d 177, 207–08 (Tex. App.—Houston [1st Dist.] 2016, pet. ref’d). When “the premise of a habeas corpus application is destroyed by subsequent developments, the legal issues raised thereunder are rendered moot.” *State v. Golding*, 398 S.W.3d 745, 747 (Tex. App.—Houston [1st Dist.] 2011, pet. ref’d); *see also McGuire*, 493 S.W.3d at 207–08.

In his second amended application for writ of habeas corpus, appellant argued that he was being “illegally restrained in the Harris County Jail” because “he was arrested [in February 2022 based] on an unlawful *alias capias* issued in 2017.”

⁹ On September 29, 2022, this Court denied appellant’s motion for rehearing filed in the direct appeal.

Appellant requested that the criminal district court “order his immediate release [from confinement].” On appeal, appellant has requested that this Court reverse the criminal district court’s denial of his second amended application for writ of habeas corpus and remand the case to the criminal district court with instructions to order his immediate release from confinement.

Notably, on July 21, 2022, while appellant’s habeas appeal was pending, this Court issued an opinion in the direct appeal, affirming the criminal district court’s judgment adjudicating appellant’s guilt and assessing his punishment at confinement for twenty years. *See Bell V*, 649 S.W.3d at 901. Based on this Court’s affirmance of the trial court’s judgment in the direct appeal, appellant is not entitled to release from confinement. *See* TEX. CODE CRIM. PROC. ANN. art. 44.04(b) (“[A] defendant may not be released on bail pending the appeal from any felony conviction where the punishment equals or exceeds 10 years confinement or where the defendant has been convicted of an offense listed under [Texas Code of Criminal Procedure] [a]rticle 42A.054(a), but shall immediately be placed in custody”); *Wilson v. State*, No. 07-10-0347-CR, 2012 WL 414387, at *1 (Tex. App.—Amarillo Feb. 9, 2012, order) (not designated for publication) (where defendant’s conviction affirmed by court of appeals, defendant not entitled to release); *cf.* TEX. CODE CRIM. PROC. ANN. art. 44.04(h) (“*If a conviction is reversed by a decision of a Court of Appeals, the defendant, if in custody, is entitled to release on reasonable bail, regardless of*

the length of term of imprisonment, pending final determination of an appeal by the [S]tate or the defendant on a motion for discretionary review.” (emphasis added)); *Ortiz v. State*, No. PD-1061-19, 2019 WL 7759416, at *1 (Tex. Crim. App. Dec. 9, 2019) (order) (not designated for publication) (after court of appeals *reversed* defendant’s conviction, defendant entitled to be released from confinement “assessed in th[e] ca[se] upon the posing of bail”); *Ruffins v. State*, No. 03-18-00540-CR, 2020 WL 6018642, at *1 (Tex. App.—Austin Oct. 6, 2020, order) (not designated for publication) (where court of appeals *reversed* defendant’s conviction and remanded case for new trial, defendant entitled to be “released from confinement assessed in th[e] ca[se] upon the posting of bail”); *Taylor v. State*, 564 S.W.3d 501, 503 (Tex. App.—Houston [14th Dist.] 2018, order) (where court of appeals rendered judgment *vacating* trial court’s judgment of conviction and remanding case to juvenile court for further proceedings, concluding defendant “entitled to release on reasonable bail”).

This Court cannot address moot issues because we lack jurisdiction to render advisory opinions. *See In re N.H.N.*, 580 S.W.3d 440, 443–44 (Tex. App.—Houston [14th Dist.] 2019, no pet.); *Ex parte Huerta*, 582 S.W.3d 407, 410–11 (Tex. App.—Amarillo 2018, pet. ref’d) (“A court of appeals has no jurisdiction to decide moot controversies and issue advisory opinions.”); *McGuire*, 493 S.W.3d at 208 (“We cannot give any opinion on the merits underlying a moot habeas petition because

such an opinion would be advisory only.” (internal quotations omitted)). And Texas courts have routinely recognized that when “the premise of a habeas corpus application is destroyed by subsequent developments, the legal issues raised thereunder are rendered moot.” *Golding*, 398 S.W.3d at 747; *see also McGuire*, 493 S.W.3d at 207–08.

Here, although appellant has requested immediate release from confinement, because of this Court’s affirmance of the trial court’s judgment adjudicating appellant’s guilt in his direct appeal, appellant has requested relief that no court can grant. *See Ex parte Landry*, No. 05-22-00181-CR, 2022 WL 3584633, at *1 (Tex. App.—Dallas Aug. 22, 2022, no pet.) (mem. op., not designated for publication) (“When subsequent developments end the controversy that serves as the premise for habeas relief, an appeal from the denial of a habeas application becomes moot.”); *Ex parte Huerta*, 582 S.W.3d at 410–11 (“No judgment we could render in his [habeas] appeal, or the trial court could render on remand, would grant [defendant] any relief he sought in his habeas corpus [application]. Our opinion would merely be advisory.”); *see also Ex parte King*, No. 05-20-00781-CR, 2021 WL 5817329, at *1 (Tex. App.—Dallas Dec. 7, 2021, no pet.) (mem. op., not designated for publication) (“Habeas is only appropriate when granting the writ would result in the release of the habeas applicant.”); *Bennet v. State*, 818 S.W.2d 199, 200 (Tex. App.—Houston [14th Dist.] 1991, no pet.) (defendant’s complaints raised in pretrial habeas

application about bail amount became moot after defendant convicted of offense because defendant “now legally confined pursuant to a guilty verdict” and “no action [of the appellate] court c[ould] . . . cause any effect”). And any opinion that this Court would issue addressing whether the trial court erred in denying appellant habeas relief because “the State unlawfully arrest[ed] [appellant] in February 2022” based on a purportedly unlawful *capias* would be advisory. *See Brown v. Todd*, 53 S.W.3d 297, 302 (Tex. 2001) (advisory opinions “decide abstract questions of law without binding the parties”); *Ex parte Huerta*, 582 S.W.3d at 410–11.

Thus, we hold that we lack jurisdiction over appellant’s appeal from the trial court’s denial of his second amended application for writ of habeas corpus. *See Ex parte Landry*, 2022 WL 3584633, at *1 (“[W]hen habeas proceedings become moot, pending appeals must be dismissed because appellate courts lack jurisdiction to decide moot controversies and issue advisory opinions.”).

Conclusion

We dismiss the appeal for lack of jurisdiction.

Julie Countiss
Justice

Panel consists of Chief Justice Radack and Justices Countiss and Rivas-Molloy.

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