Dismissed and Memorandum Opinion filed December 21, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00629-CR

EX PARTE WILLIAM SOLOMON LEWIS

On Appeal from the County Criminal Court at Law No. 2
Harris County, Texas
Trial Court Cause No. 2059197

M E M O R A N D U M O P I N I O N

Appellant William Solomon Lewis appeals the trial court's June 24, 2016 order denying his application for a writ of habeas corpus. The State asserts that this court lacks jurisdiction because the trial court did not rule on the merits of appellant's application as necessary to create an appealable order. We dismiss for want of jurisdiction.

BACKGROUND

Appellant was arrested in 1994 after an altercation with his younger brother. Appellant pleaded no contest to a charge of misdemeanor assault and was placed on

community supervision for two years. Appellant's community supervision was revoked after appellant violated its terms.

In November 2015, while serving time in a Pennsylvania federal prison on an unrelated offense, appellant sought habeas relief from his misdemeanor assault conviction. *See* Tex. Code Crim. Proc. Ann. art. 11.09 (Vernon 2015). Appellant alleged that his plea was not voluntary because he received ineffective assistance of counsel.

The trial court signed two writs on November 19, 2015, directed to the Harris County Sheriff. The first writ appears to have been drafted by appellant. The first writ states that the trial court reviewed appellant's "[a]pplication and petition" and found that appellant was "entitled to an evidentiary hearing."

The second writ appears to be a Harris County form. The second writ orders the sheriff to produce appellant in court on December 11, 2015. Neither writ addresses the fact that appellant was imprisoned in Pennsylvania.

Appellant's December 11, 2015 court date was repeatedly reset. The appellate record does not show that appellant ever appeared before the trial court in connection with his requested habeas relief.

The trial court granted appellant's request for counsel in January 2016.

The State filed an answer to appellant's habeas application in April 2016. Appellant filed a reply. Appellant also filed a motion requesting an evidentiary hearing and a motion requesting appellant's presence at the evidentiary hearing.

On June 24, 2016, the trial court signed two orders denying appellant's motions. The trial court also signed a preprinted judgment denying appellant's requested habeas relief. Although the trial court denied appellant's request for an evidentiary hearing and the court reporter confirmed that there is no reporter's record

in this case, the preprinted judgment states "the applicant and [the State] appeared for a hearing on the [habeas] application."

Appellant appealed the trial court's denial of his habeas application.

ANALYSIS

There is no right of appeal from a refusal to issue a writ of habeas corpus when the trial court did not address the merits of the application. *Ex parte Hargett*, 819 S.W.2d 866, 869 (Tex. Crim. App. 1991) (en banc); *Ex parte Gonzales*, 12 S.W.3d 913, 914 (Tex. App.—Austin 2000, pet. ref'd).

Our analysis therefore examines whether the trial court considered and resolved the merits of appellant's habeas application. *See Gonzales*, 12 S.W.3d at 914 ("If the trial court reaches the merits of the habeas corpus application, its ruling is appealable even if it comes in the form of an order refusing to issue the writ."); *see also In re R.G.*, 388 S.W.3d 820, 822 (Tex. App.—Houston [1st Dist.] 2012, no pet.) ("when a hearing is held on the merits of an applicant's [habeas] claim and the court subsequently rules on the merits of that claim, the losing party may appeal" (internal quotation omitted)). We review the entire appellate record for this determination. *See Ex parte Bowers*, 36 S.W.3d 926, 926 (Tex. App.—Dallas 2001, pet. ref'd) (court lacked jurisdiction over appeal from trial court's refusal to grant a writ of habeas corpus where "[n]either the order — nor anything else in the record . . . — reflected that the trial court considered the merits of appellant's petition").

In *Purchase v. State*, 176 S.W.3d 406 (Tex. App.—Houston [1st Dist.] 2004, no pet.), the court concluded that the trial court did not reach the merits of the appellant's habeas application where the trial court (1) denied the writ without hearing evidence or argument regarding the appellant's claims; and (2) did not express an opinion on the merits of the appellant's claims. *Id*. at 407; *see also Ex*

parte Campos, No. 14-17-00492-CR, 2017 WL 4797839, at *2 (Tex. App.—Houston [14th Dist.] Oct. 24, 2017, no pet.) (appellant appealed trial court's denial of habeas application; the court concluded that it lacked jurisdiction to consider appeal where "[t]he record . . . [did] not establish that the trial court ruled on the underlying merits of appellant's writ application").

Here, because the record does not show that the trial court reached the merits of appellant's habeas application, this court lacks jurisdiction to consider appellant's appeal. The record does not show that the trial court heard evidence or argument addressing appellant's claims. The trial court instead denied appellant's motion for an evidentiary hearing and denied appellant's motion seeking to appear at the hearing. Similarly, the record does not show that the trial court considered or resolved the merits of appellant's habeas application. Instead, in a preprinted order entitled "Judgment Writ of Habeas Corpus," the trial court simply checked a box stating that "Orders Relief Denied." Because the trial court did not reach the merits of appellant's habeas application, this court lacks jurisdiction to consider appellant's arguments on appeal. *See Campos*, 2017 WL 4797839, at *2; *Purchase*, 176 S.W.3d at 407.

Although the trial court's judgment denying habeas relief states that "the applicant and [the State] appeared for a hearing on the application," this form language is insufficient to show that the trial court considered the merits of appellant's habeas petition. First, this language was not added by the trial court but was part of the preprinted form the trial court filled out when it was denying appellant's requested relief. There is not a court reporter's record or any other documentation showing that a hearing took place. Second, a hearing alone is insufficient to show that the trial court considered the merits of appellant's habeas claims. *See Hargett*, 819 S.W.2d at 868 (distinguishing between two types of

hearings held on habeas application: (1) a hearing to determine "whether the merits of the claim should be addressed," which does not give rise to appellate review; and (2) a hearing "held to ultimately resolve the merits of an applicant's claim," which gives rise to appellate review). A sentence in the preprinted judgment referencing a hearing — without anything else in the record showing that the trial court addressed the merits of appellant's claims — does not give rise to an appealable order.

CONCLUSION

We conclude that we do not have jurisdiction to decide the issues raised in appellant's appeal. We order the appeal dismissed for lack of jurisdiction.

/s/ William J. Boyce
Justice

Panel consists of Justices Boyce, Donovan, and Jewell.
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