

**Motion Granted, Appeal Dismissed, and Memorandum Opinion filed
November 16, 2021.**



In The

Fourteenth Court of Appeals

NO. 14-21-00380-CR

LEXTER KENNON KOSSIE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 679887**

MEMORANDUM OPINION

Before the court is the State's motion to dismiss appellant Lexter Kennon Kossie's appeal. We grant the motion.

Appellant, proceeding pro se in this appeal, was convicted of aggravated robbery in 1994 and sentenced to life imprisonment. This court affirmed his conviction on March 13, 1997. *See Kossie v. State*, No. 14-94-01171-CR, 1997 WL 109996 (Tex. App.—Houston [14th Dist.] Mar. 13, 1997, no pet.). He did not seek review of that decision from the Texas Court of Criminal Appeals. This court

issued its mandate following the affirmance, and his conviction is final. In this appeal, appellant seeks review of the denial of his June 10, 2021 motion for new trial pursuant to article 40.001 of the Texas Code of Criminal Procedure on the basis of evidence he contends is material and warrants relief in the form of a new trial.

We express no view about whether the evidence appellant advances here justifies relief, because we conclude based on the State's motion and our own evaluation of our jurisdiction that we lack jurisdiction to grant him any relief in this appeal. *Cf. State ex rel. Best v. Harper*, 562 S.W.3d 1, 7 (Tex. 2018) (acknowledging the Texas Supreme Court, like Texas courts more generally, must evaluate its own jurisdiction sua sponte). Article 11.07 of the Texas Code of Criminal Procedure sets out "the procedures for an application for writ of habeas corpus in which the applicant seeks relief from a felony judgment imposing a penalty other than death." Tex. Code Crim. Proc. Ann. art. 11.07 § 1. The statute's mechanism primarily involves both the Texas Court of Criminal Appeals and the court in which the conviction being challenged was obtained. *Id.* § 3(a)–(b); *see also Maye v. State*, 966 S.W.2d 140, 142 (Tex. App.—Houston [14th Dist.] 1998, no pet.). The statute notes that "[a]fter conviction [its] procedure . . . shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner." *Id.* § 5.

Although this court previously informed appellant of the jurisdictional problem created by that statute, he contends this court possesses jurisdiction over this appeal because his notice of appeal was filed within 30 days of the denial of his motion for new trial. Defendants in criminal cases have the right of appeal only under circumstances authorized by the Texas Legislature; a timely notice of appeal can only confer jurisdiction on this court if such circumstances are present. *See Lyon v. State*, 872 S.W.2d 732, 734 (Tex. Crim. App. 1994). And as

mentioned above, the procedure the Texas Legislature has established for review of and relief from convictions like appellant's gives jurisdiction to the Texas Court of Criminal Appeals, not this court. *See Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (rejecting a habeas-type remedy provided by a Texas intermediate appeals court, as the Texas Court of Criminal Appeals is "the only court with jurisdiction in final post-conviction felony proceedings").

The State's motion provides another basis for dismissing this appeal. Appellant's conviction was previously affirmed by this court and mandate has issued. As a result, the trial court lacks general jurisdiction to modify appellant's previously upheld judgment and sentence, but possesses jurisdiction solely to ensure the mandate is carried out and to perform limited functions authorized by statute. *State v. Patrick*, 86 S.W.3d 592, 594 (Tex. Crim. App. 2002). Granting relief pursuant to a motion for a new trial is not one of the functions statutorily authorized after a mandate has been issued. *See id.* Similarly, this court is without jurisdiction to evaluate the merits of the appeal from the denial of appellant's belated motion for new trial. *See Ater*, 802 S.W.2d at 243.

To summarize, although an application for a writ of habeas corpus with the Texas Court of Criminal Appeals might provide appellant with an opportunity for the relief he seeks (and we express no view as to whether it will or should grant relief to appellant), this court lacks jurisdiction to provide appellant with any relief on his motion for a new trial. Accordingly, we grant the State's motion and dismiss this appeal for want of jurisdiction.

PER CURIAM

Panel consists of Chief Justice Christopher and Justices Jewell and Poissant.

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