

Motion for En Banc Reconsideration Granted; December 2, 2021 Majority and Dissenting Opinions Withdrawn; Affirmed and Substitute Majority and Dissenting Opinions filed October 18, 2022.



In The

Fourteenth Court of Appeals

NO. 14-20-00754-CR

LLOYD ANDREW CHAMBERS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 5823**

**DISSENTING OPINION ON EN BANC
RECONSIDERATION**

Can an undated document be appealed? I suspect most lawyers would guess “no.” The en banc court, however, boldly goes on a determination of jurisdictional facts on appeal, adopting a purported “common sense” approach to what is downplayed as a minor issue—we’ll just use the clerk’s file-stamp on the undated document and move the merchandise.

And maybe it would work in this case if there were a harmless-error standard for subject-matter jurisdiction. This appears to be the first precedential opinion regarding this jurisdictional issue of appealing from the county criminal court at law's undated opinion to the court of appeals—all originating from the appeal of a judgment of a municipal court of record. This court's en banc opinion stands for the proposition that subject-matter jurisdiction in such appeals is determined based on "common sense," "we know it when we see it" appellate fact finding, assisted by a harmless-error review. The en banc court goes so far in its fact finding to state the "file-stamp on the opinion's face is a reasonable indication of its date of signing." The court cites no precedential authority for using this "reasonable indication" standard for determining the date of the trial court's appealable act. I know of no such authority in the context of establishing a date that determines subject-matter jurisdiction.

This is undoubtably "efficient" and designed to save judicial resources. I am not aware that efficiency is a legal factor in reviewing whether a court has subject-matter jurisdiction. It is not difficult to imagine the hypotheticals of undated signed documents being found in a desk drawer that a clerk later file-marks with a date, perhaps months later. Is testimony allowed in the trial court to establish the date the judge signed the document? Is today's new rule limited only to these narrow appeals from municipal courts of record? We don't know.

I also join Justice Hassan's dissenting opinion. Between her concerns and mine, this appeal can be accurately described as a jurisdictional mess. I hope the court of criminal appeals cleans it up.

Even were no **separate** *judgment* from the county criminal court at law ("the chapter 30 appellate court") required in addition to the *opinion* of the chapter 30 appellate court (and I agree with Justice Hassan's position that it is required), there

nonetheless must be some document *signed* and *dated* by the chapter 30 appellate court that satisfies the requirements of a judgment in a criminal case. *See* Tex. Code Crim. Proc. Ann. art. 42.01, § 1(16), (17) (general requirements of criminal judgments); Uniform Municipal Courts of Record Act, Tex. Gov't Code Ann. §§ 30.00004(1), .00014 (defining and discussing the “appellate court”).

There is no date on the chapter 30 appellate court’s opinion other than the clerk’s file mark. The en banc court’s argument that a stand-alone opinion of the chapter 30 appellate court can be appealed to the court of appeals goes nowhere if the opinion is not both signed *and* dated. The lack of a date makes the document interlocutory. *See* Uniform Municipal Courts of Record Act, Tex. Gov’t Code Ann. § 30.00027 (authorizing appeal to court of appeals). With no date on the document showing when the judge signed, how does one determine when an appeal to this court is due?¹

It is unnecessary to reach the issue of statutory construction of the poorly drafted appellate provisions in the Government Code.² *See* Uniform Municipal Courts of Record Act, Tex. Gov’t Code Ann. § 30.00024. Perhaps an opinion of the chapter 30 appellate court that otherwise had the general requisites of a trial-court criminal judgment would comply with section 30.00024. But we just don’t get there.

We dismiss appeals for want of jurisdiction on a regular basis. I do not understand why the en banc court does not dismiss this appeal and allow the chapter 30 appellate court to properly expend judicial resources to render an

¹ The appellate record does not contain an equivalent of the oral imposition of sentence in open court, which typically begins the time to file a notice of appeal in criminal appeals. Tex. R. App. P. 26.2(a).

² This can and should be addressed by the legislature.

unambiguous final judgment.³ Instead we get a mess in the *South Western Reporter*.

Concluding that the chapter 30 appellate-court proceeding is interlocutory, I dissent to the en banc court's judgment and would dismiss the appeal for want of subject-matter jurisdiction. I have full confidence that the county criminal court at law could easily sign and date a proper judgment, making this court's strange new "reasonable indication" jurisdiction test unnecessary.

/s/ Charles A. Spain
Justice

En banc court consists of Chief Justice Christopher and Justices Wise, Jewell, Bourliot, Zimmerer, Spain, Hassan, Poissant, and Wilson (Jewell, J., majority) (Spain, J., dissenting joined by Justices Bourliot and Hassan) (Hassan, J., dissenting, joined by Justices Bourliot and Spain).

Publish — Tex. R. App. P. 47.2(b).

³ When Justice Cohen said, "Courts do not exist to conserve judicial resources. Courts exist to expend judicial resources," he did not mean for courts to lead the way deeper into the fog. *Jack v. State*, 64 S.W.3d 694, 697–98 (Tex. App.—Houston [1st Dist.] 2002) (Cohen, J., concurring), *pet. dism'd per curiam*, 149 S.W.3d 119, 125 (Tex. Crim. App. 2004).