

Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio



MEMORANDUM OPINION

No. 04-08-00818-CR

Humberto **LEAL**, Jr.,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 186th Judicial District Court, Bexar County, Texas
Trial Court No. 1994-CR-4696
Honorable Maria Teresa Herr, Judge Presiding

PER CURIAM

Sitting: Catherine Stone, Justice
Karen Angelini, Justice
Santee Bryan Marion, Justice

Delivered and Filed: December 23, 2008

DISMISSED FOR WANT OF JURISDICTION

This appeal concerns the denial of appellant's request for post-conviction DNA testing. *See* TEX. CODE CRIM. PROC. ANN. arts. 64.01-.05 (Vernon Supp. 2008). Because this court has no jurisdiction over this appeal, we dismiss the appeal for want of jurisdiction.

Appellant was convicted of capital murder and sentenced to death for the slaying of Adria Saucedo. Appellant subsequently filed a motion for DNA testing pursuant to chapter 64 of the Texas Code of Criminal Procedure. The trial court denied appellant's motion, and he brought this appeal.

Under the plain language of the statute, a person convicted of a capital crime and sentenced to death must appeal the denial of a request for DNA testing directly to the court of criminal appeals. *Id.* art. 64.05 (“An appeal under this chapter is to a court of appeals in the same manner as an appeal of any other criminal matter, except that if the convicted person was convicted in a capital case and was sentenced to death, the appeal is a direct appeal to the court of criminal appeals.”). This appeal therefore should have been filed in the court of criminal appeals. The proper remedy in this case is to dismiss the appeal for want of jurisdiction and to instruct the Clerk of this court to deliver the record to the court of criminal appeals for filing.

Based on the foregoing, the appeal is dismissed for want of jurisdiction.

PER CURIAM

DO NOT PUBLISH

