

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



**MEMORANDUM OPINION**

No. 04-09-00588-CR

Gary Ace AVANT,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 399th Judicial District Court, Bexar County, Texas  
Trial Court No. 2008-CR-1308  
Honorable Juanita A. Vasquez-Gardner, Judge Presiding

PER CURIAM

Sitting: Catherine Stone, Chief Justice  
Karen A. Angelini, Justice  
Marialyn Barnard, Justice

Delivered and Filed: October 7, 2009

DISMISSED

On August 9, 2009, appellant Gary Ace Avant filed a notice of appeal stating he was appealing “within thirty (30) days of sentence having been imposed against Defendant on 11 day of July 2009 in said cause.” However, the clerk’s record does not contain a judgment or other appealable order of the trial court in this cause. Rather, the clerk’s record contains a State’s motion to dismiss this cause, which was signed by the trial court on June 11, 2009. The motion shows the

State requested a dismissal because appellant “was convicted in another case or count,” specifically cause number 2008-CR-8981. Thus, it appeared to this court that we had no jurisdiction in this matter.

In light of the foregoing, we ordered appellant to file a response showing why the appeal should not be dismissed for want of jurisdiction. *See* TEX. R. APP. P. 42.3(c). In response, appellant’s appointed appellate counsel filed a response stating “there is no final conviction in this case, and therefore no jurisdiction for this Court to consider the Appellant’s purported appeal.”<sup>1</sup>

Accordingly, because there is no appealable judgment or order in this cause, we dismiss the appeal for want of jurisdiction. *Id.* R. 42.3(a).

PER CURIAM

DO NOT PUBLISH

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<sup>1</sup> [↑](#) Appellant notes there is an inconsistency in the clerk’s record in that the “Certificate of Notice of Appeal to the Fourth Court of Appeals,” which was filed by the district clerk, indicates appellant was convicted in this matter. We agree with appellant that this certificate is incorrect – appellant was not convicted in this cause of any offense.