



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00635-CR

Juan Guzman **ZUNIGA** Jr.,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 186th Judicial District Court, Bexar County, Texas
Trial Court No. 2006CR5239
Honorable Jefferson Moore, Judge Presiding

PER CURIAM

Sitting: Karen Angelini, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: October 31, 2018

DISMISSED FOR LACK OF JURISDICTION

This is an attempted appeal from the trial court's failure to rule on an untimely-filed motion for new trial.

Appellant Juan Guzman Zuniga Jr. was convicted of sexual assault in September 2007, and this court affirmed his conviction on direct appeal. *See Zuniga v. State*, No. 04-07-00729-CR, 2008 WL 4163224 (Tex. App.—San Antonio Sept. 10, 2008, pet. stricken) (not designated for publication). In September 2016, Zuniga filed a motion for forensic DNA testing and a motion to appoint counsel. The trial court denied the request for counsel on March 14, 2017, and denied the

motion for post-conviction DNA testing on April 17, 2017. Zuniga timely appealed, and this court subsequently affirmed the trial court. *See Zuniga v. State*, No. 04-17-00370-CR, 2018 WL 280521 (Tex. App.—Jan. 3, 2018, pet. ref'd) (mem. op., not designated for publication). On June 2, 2017, while the appeal was pending, Zuniga filed an untimely motion for new trial in the trial court, asking the court to reconsider its rulings on his request for counsel and DNA testing. The trial court did not rule on the motion, and Zuniga filed the instant notice of appeal in September 2017, complaining of the court's failure to rule.

A defendant in a criminal action has a right to appeal a final judgment of conviction and orders made appealable by statute. *See Abbott v. State*, 271 S.W.3d 694, 696-97 (Tex. Crim. App. 2008). The appealable order in Zuniga's post-conviction DNA proceeding was the order denying the motion for post-conviction DNA testing, which was the subject of Appeal No. 04-17-00370-CR. There is no further final judgment or appealable order in that proceeding that Zuniga may appeal, and he has therefore failed to properly invoke the jurisdiction of this court.

We therefore dismiss this appeal for lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH