



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-18-00316-CR

Eustorgio Guzman **RESENDEZ**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 229th Judicial District Court, Starr County, Texas  
Trial Court No. 91-CR-43-B  
Honorable Gilberto Hinojosa, Judge Presiding

PER CURIAM

Sitting: Rebeca C. Martinez, Justice  
Patricia O. Alvarez, Justice  
Luz Elena D. Chapa, Justice

Delivered and Filed: August 1, 2018

DISMISSED FOR LACK OF JURISDICTION

Appellant Eustorgio Guzman Resendez challenges the trial court’s “failure to appoint counsel under Texas Code of Criminal Procedure chapter 64.01(c) and failure ... to rule on DNA Motion.” Because the clerk’s record does not contain a final appealable order, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellant did not respond.

Article 64.01 provides for an appeal only of a finding under article 64.03 or 64.04 of the Code of Criminal Procedure (relating to an order for forensic testing and whether the results are

favorable to the convicted person). TEX. CODE CRIM. PROC. ANN. art. 64.05 (West 2018). There is no provision for a direct appeal of the trial court's failure to appoint counsel. *See Winters v. Presiding Judge of Crim. Dist. Ct. No. Three of Tarrant Cty.*, 118 S.W.3d 773, 774 (Tex. Crim. App. 2003); *Neveu v. Culver*, 105 S.W.3d 641, 642-43 (Tex. Crim. App. 2003); *Fry v. State*, 112 S.W.3d 611, 613 (Tex. App.—Fort Worth 2003, pet. ref'd). Thus, there is no appealable order before this court, and we have no jurisdiction to consider the appeal. *See Fry*, 112 S.W.3d at 613; *McIntosh v. State*, 110 S.W.3d 51, 52-53 (Tex. App.—Waco 2002, no pet.). Accordingly, we dismiss this appeal for lack of jurisdiction.

PER CURIAM

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