



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

**MEMORANDUM OPINION**

No. 04-22-00190-CR

Frederick O. **SILVER**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the County Court at Law No. 1, Bexar County, Texas  
Trial Court No. 671214  
Honorable Helen P. Stowe, Judge Presiding

PER CURIAM

Sitting: Rebeca C. Martinez, Chief Justice  
Liza A. Rodriguez, Justice  
Lori I. Valenzuela, Justice

Delivered and Filed: May 11, 2022

DISMISSED FOR LACK OF JURISDICTION

In the underlying case, the State filed a criminal complaint against Appellant Frederick O. Silver, alleging that he committed the offense of FALSE REPORT TO P-O. The clerk's record reflects that no final judgment of conviction has been signed in the underlying cause. Silver has filed two pro se notices of appeal, complaining of pretrial orders. Thus, this appeal is interlocutory.

The first notice of appeal, which was filed April 6, 2022, states that Silver intends to appeal the order signed by Judge Stowe on April 5, 2022. The clerk's record reflects that on April 5, 2022,

Silver's appointed counsel filed a motion for competency evaluation.<sup>1</sup> The clerk's record further reflects that on April 5, 2022, Judge Stowe signed an order finding that a competency evaluation is needed.

The second notice of appeal states that Silver intends to appeal Judge Harle's March 15, 2022 order denying Silver's motion to recuse Judge Stowe. The clerk's record reflects that on March 17, 2022, Judge Harle signed a "Corrected Order Denying Motion to Recuse."

As noted, because no final judgment of conviction has been signed, Silver's appeal is interlocutory. The right to appeal in a criminal case is a statutorily created right. *See* TEX. CODE CRIM. PROC. art. 44.02; *Bayless v. State*, 91 S.W.3d 801, 805 (Tex. Crim. App. 2002). Thus, the "standard for determining jurisdiction is not whether the appeal is precluded by law, but whether the appeal is authorized by law." *Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014) (quoting *Abbott v. State*, 271 S.W.3d 694, 696-97 (Tex. Crim. App. 2008)). "This extends to interlocutory appeals as well." *Id.* The court of criminal appeals has explained that the "courts of appeals do not have jurisdiction to review interlocutory orders unless that jurisdiction has been expressly granted by law." *Id.* (quoting *Apolinar v. State*, 820 S.W.2d 792, 794 (Tex. Crim. App. 1991)).

We have found no statutory authority permitting a defendant to appeal from a trial court order denying a motion to recuse. *See Hranicky v. State*, No. 01-11-00557-CR, 2013 WL 1804495, at \*3 (Tex. App.—Houston [1st Dist.] Apr. 30, 2013, pet. ref'd) (holding appellate court had no jurisdiction to decide the interlocutory appeal from the denial of a pre-trial motion to recuse the trial judge). Similarly, we have found no statutory authority permitting a defendant to appeal from a trial court order for competency evaluation. *See Richardson v. State*, No. 02-21-00191-CR, 2022

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<sup>1</sup>The clerk's record indicates that on November 29, 2021, Judge Stowe handwrote on a pleading titled "Waiver of Counsel By Pro Se Defendant" that Silver "indicated he would like to be pro se but refused to sign this document."

WL 557427, at \*1 (Tex. App.—Fort Worth Feb. 24, 2022, no pet. h.) (dismissing for lack of jurisdiction appeal from trial court order for competency examination).

We therefore ordered Silver to show cause why this appeal should not be dismissed for lack of jurisdiction. Silver has filed a written response, arguing that we have jurisdiction to decide an interlocutory appeal of the trial court's denial of his special appearance based on personal jurisdiction. In support of this assertion, Silver cites section 51.014(a)(7) of the Texas Civil Practice Remedies Code, which authorizes an interlocutory appeal from an order that grants or denies the special appearance of a defendant under Texas Rule of Civil Procedure 120a. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(7). However, as the underlying case is a criminal matter, and not a civil one, neither section 51.014(a)(7) nor Rule 120a is applicable to this appeal.

Further, we can find no statute or rule that would allow an interlocutory appeal from a trial court's denial of a criminal defendant's special appearance based on the lack of personal jurisdiction. *See Taylor v. State*, 268 S.W.3d 752, 753, 755-56 (Tex. App.—Waco 2008, pet. ref'd) (finding no jurisdiction to hear interlocutory appeal from a trial court order denying a criminal defendant's special appearance). Therefore, we dismiss this appeal for lack of jurisdiction.

PER CURIAM

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