

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00199-CR

EX PARTE OBED GONZALEZ

On Appeal from the County Court at Law No. 5
Montgomery County, Texas
Trial Cause No. 11-25295

MEMORANDUM OPINION

Obed Gonzalez appeals the trial court's denial of his pretrial application for habeas relief in a misdemeanor prosecution. *See* Tex. Code Crim. Proc. Ann. art. 11.09 (West 2005). We affirm the trial court's order.

The facts were largely agreed to in a series of three trial court hearings. On June 21, 2005, Gonzalez was indicted for driving while intoxicated for an offense committed on June 5, 2005. He was convicted and placed on community supervision. After Gonzalez's conviction for one of the predicate misdemeanor offenses was vacated, the district court granted habeas relief and set aside the felony conviction on March 4, 2009. *See* Tex. Code Crim. Proc. Ann. art. 11.072 (West 2005); *see also Ex parte Sparks*, 206

S.W.3d 680, 682-83 (Tex. Crim. App. 2006). The State filed an information on August 12, 2010. After Gonzalez raised limitations in a motion to quash, the State obtained leave of court and amended its pleadings to allege tolling. *See* Tex. Code. Crim. Proc. Ann. art. 12.05(b) (West 2005) (“The time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation.”). Gonzalez moved to quash the amended complaint. The trial court denied the motion to quash and subsequently denied Gonzalez’s habeas petition.

Gonzalez seeks habeas relief from an information that alleges: (1) Gonzalez committed the offense of driving while intoxication on or about June 5, 2005; (2) he was charged by information and indictment on June 21, 2005; and (3) that indictment was pending through March 3, 2009. *See* Tex. Code. Crim. Proc. Ann. art. 12.05(c) (“The term ‘during the pendency,’ as used herein, means that period of time beginning with the day the indictment, information, or complaint is filed in a court of competent jurisdiction, and ending with the day such accusation is, by an order of a trial court having jurisdiction thereof, determined to be invalid for any reason.”). The pleadings facially allege a date within the limitations period. *Id.*; *see also* Tex. Code Crim. Proc. Ann. art. 12.02 (West Supp. 2010).

When the charging instrument alleges the tolling of limitations, relief is not cognizable on a pretrial writ, and cannot be raised in an interlocutory appeal. *See generally Ex parte Doster*, 303 S.W.3d 720, 724 (Tex. Crim. App. 2010) (discussing use

of pretrial writ in context of limitations). Gonzalez's liberty is restrained by a charging instrument that facially alleges tolling of the limitations period by a court of competent jurisdiction. Any defects in those allegations are reparable and as such cannot be raised by a pretrial petition for a writ of habeas corpus. We affirm the trial court's order denying habeas relief.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on August 25, 2011
Opinion Delivered August 31, 2011
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.