In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-17-00237-CR

THE STATE OF TEXAS, Appellant

V.

JARED RISHER MOORE, Appellee

On Appeal from the County Court
San Jacinto County, Texas
Trial Cause No. 2016-86

MEMORANDUM OPINION

On June 20, 2017, the trial court signed an order granting the State's motion to dismiss the State's motion to adjudicate guilt on the grounds that "[t]he Defendant has completed all obligations owed to the Probation Dept." On the same date, the trial court signed a separate order on cash bond forfeiture. The order recites that the defendant, Jared Risher Moore, paid a cash bond in the amount of $1,050 and orders that $562.00 be paid to the County Clerk with the remainder to be paid to the defendant. The orders adds, "Payment of delinquent Probation Dept. fees is waived."

On June 26, 2017, the State filed a notice of appeal that recites, in part, "the State intends to appeal . . . from Motion to Dismiss State's Motion to Adjudicate Guilt and Order on Cash Bond Forfeiture of Jury Trial which was modified after the order was signed and as modified orders an illegal sentence." We questioned our jurisdiction and the parties filed responses.

The State maintains that an appeal is authorized because the trial court's order "arrests or modifies a judgment." Tex. Code Crim. Proc. Ann. art. 44.01(a)(2) (West Supp. 2016). The State argues that "the judge did not modify the actual judgment paperwork, but by modifying the Order on Cash Bond Forfeiture, he in affect modified the judgment." The modified "judgment" in this case is the order on cash bond forfeiture.[1] Generally, Article 44.01(a)(2) does not provide for the State to appeal a final judgment in a bond forfeiture case. *See State v. Sellers*, 790 S.W.2d 316, 320 (Tex. Crim. App. 1990); *State v. Green*, 287 S.W.3d 782, 784 (Tex. App.—Amarillo 2009, no pet.). The State's remedy is by mandamus. *See State ex rel. Vance*

[1] In response to this Court's inquiry, the State provided affidavits concerning the circumstances under which the bond forfeiture order was allegedly modified. We note, however, that only one order on bond forfeiture appears in the clerk's record and it appears the proceedings were not recorded. The State did not file a formal bill of exception. *See* Tex. R. App. P. 33.2. Evidence not found in the record cannot be considered in deciding a substantive claim of error in the trial court. *See Yarbrough v. State*, 57 S.W.3d 611, 615-16 (Tex. App.—Texarkana 2001, pet. ref'd).

v. Routt, 571 S.W.2d 903, 907-08 (Tex. Crim. App. 1978). We dismiss the appeal for lack of jurisdiction.

APPEAL DISMISSED.

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LEANNE JOHNSON
Justice

Submitted on October 31, 2017
Opinion Delivered November 1, 2017
Do Not Publish

Before McKeithen, C.J., Kreger and Johnson, JJ.