



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-15-00328-CR

MICHAEL CRISTIAN STEELE

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 213TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1353987D

MEMORANDUM OPINION¹

Appellant Michael Cristian Steele attempts to appeal the denial of relief on his petition for writ of habeas corpus.

In July 2014, the trial court set Appellant's punishment for sexual assault of a child under seventeen at five years' deferred adjudication community service. The sentence comported with Appellant's plea-bargain. On April 28, 2015, the

¹See Tex. R. App. P. 47.4.

State petitioned to proceed to adjudication on the grounds that Appellant had violated the terms of community supervision and sought the revocation of Appellant's community supervision.

On August 10, 2015, Appellant filed an application for writ of habeas corpus under articles 11.05, 11.08, and 11.23 of the code of criminal procedure in the trial court. Tex. Code Crim. Proc. Ann. arts. 11.05, 11.08, 11.23 (West 2015). A hearing was held on Appellant's application for habeas relief on August 13, 2015. At the conclusion of the hearing, the trial court orally denied Appellant's application for writ of habeas corpus. When Appellant re-urged his application for writ of habeas corpus at the beginning of the hearing on the merits of the State's petition to adjudicate on September 17, 2015, the trial court reaffirmed its previous ruling denying the application. The trial court then granted the State's petition to adjudicate, found Appellant guilty of sexual assault of a child under the age of seventeen, and sentenced him to five years' confinement. This appeal followed.

On July 13, 2016, on Appellant's unopposed motion, we abated the appeal and remanded the case to the trial court in order for it to issue an order reflecting its ruling on Appellant's application for writ of habeas corpus. The trial court subsequently entered an order on August 5, 2016, denying Appellant's application.

Article 11.072 is the exclusive habeas provision for a case involving an individual who is serving a term of community supervision. Tex. Code Crim.

Proc. Ann. art. 11.072 (West 2015); *Ex parte Torres*, 483 S.W.3d 35, 42 (Tex. Crim. App. 2016) (citing *Ex parte Villanueva*, 252 S.W.3d 391, 397 (Tex. Crim. App. 2008)); *State v. Guerrero*, 400 S.W.3d 576, 582 (Tex. Crim. App. 2013). Failure to follow the proper procedures outlined in Chapter 11 in applying for a writ of habeas corpus “risks failing to invoke the trial court’s habeas-corpus jurisdiction.” *Guerrero*, 400 S.W.3d at 584 (noting that the trial court would have been justified in dismissing appellant’s “motion in arrest of judgment” for lack of jurisdiction because it did not invoke article 11.072).

On September 29, 2016, we sent a letter to the parties stating our concern that we may lack jurisdiction over this appeal because Appellant’s application for writ of habeas corpus was filed under articles 11.05, 11.08, and 11.23 of the code of criminal procedure instead of article 11.072. Tex. Code Crim. Proc. Ann. arts. 11.05, 11.072, 11.08, 11.23 (West 2015).² We notified Appellant that his appeal could be dismissed based on our lack of jurisdiction unless he or any party desiring to continue the appeal filed a response showing grounds for continuing the appeal by August 29, 2016. See Tex. R. App. P. 42.3(a), 44.3. The State filed a letter brief stating its position that this court has jurisdiction over this appeal, but solely to determine whether the trial court even had jurisdiction

²In the case of *Ex parte Balderrama*, 214 S.W.3d 530, 532 (Tex. App.—Austin 2006, pet. ref’d), our sister court held that the appellant’s invocation of article 11.08 rather than 11.072 was “of little consequence” because the procedural requirements of article 11.072 had been followed by the parties. Comparatively, the requirements of article 11.072 were not followed in this case. See Tex. Code Crim. Proc. Ann. art. 11.072 §§ 5–7.

and then to reform the trial court's order to show the trial court had no jurisdiction to reach the merits, thus claiming the trial court should have dismissed the 11.08 application.³ We agree.

Because we only have jurisdiction over this appeal to determine whether the trial court's order was void, we conclude and hold that the trial court had no jurisdiction to hear an 11.08 application in a case where the Appellant has been given community supervision. We therefore determine and hold the trial court had no jurisdiction, its order on the merits was therefore void, and Appellant's application for writ of habeas corpus is hereby ordered dismissed. See Tex. R. App. P. 31.3; *Ex parte Sledge*, 391 S.W.3d 104, 113 (Tex. Crim App. 2013) (Alcala, J., dissenting) (noting that judgments rendered in courts without jurisdiction of the defendant are "an absolute nullity from their inception"); *Ex parte Jagneaux*, 315 S.W.3d 155, 156–57 (Tex. App.—Beaumont 2010, no pet.) ("In an appeal of a final order in a habeas corpus proceeding, we are to make 'whatever orders the law and the nature of the case require.'").

PER CURIAM

PANEL: SUDDERTH, J.; LIVINGSTON, C.J.; and DAUPHINOT, J.

DAUPHINOT, J., concurs without opinion.

³Appellant filed a response but did not provide us with any basis of jurisdiction over his appeal. Appellant's response consisted of one sentence stating that his counsel "has read the State's Letter and has nothing to add."

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: November 10, 2016