



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

NO. 02-17-00259-CR

JEFFERY LEE MANNS

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 396TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1213452D

MEMORANDUM OPINION¹

Appellant Jeffery Lee Manns attempts to appeal the trial court's denial of his motion for appointment of counsel to file a subsequent post-conviction motion for forensic DNA testing. We dismiss for want of jurisdiction.

I. BACKGROUND

On November 10, 2011, a jury convicted Manns of aggravated robbery with a deadly weapon, a knife, and the trial court sentenced him to forty-five

¹See Tex. R. App. P. 47.4.

years' confinement. We affirmed his conviction. See *Manns v. State*, No. 02-11-00512-CR, 2012 WL 6049099, at *5 (Tex. App.—Fort Worth Dec. 6, 2012, pet. ref'd).

On December 12, 2014, Manns filed a motion for forensic DNA testing of the knife and requested the appointment of counsel. See Tex. Code Crim. Proc. Ann. art. 64.01(a-1), (c) (West Supp. 2016). The trial court denied the motion for testing and the request for counsel. See *id.* art. 64.03(a) (West Supp. 2016). Manns attempted to appeal from this order, but we dismissed the appeal for want of jurisdiction because his notice of appeal was untimely filed. See *Manns v. State*, No. 02-15-00247-CR, 2015 WL 5893122, at *1 (Tex. App.—Fort Worth Oct. 8, 2015, no pet.); see also Tex. Code Crim. Proc. Ann. art. 64.05 (West 2006); Tex. R. App. P. 26.2(a).

On February 28, 2017, Manns filed in the trial court a motion for appointed counsel in order to file a second motion for forensic DNA testing of the knife. See Tex. Code Crim. Proc. Ann. art. 64.01(c). The trial court ordered the State to respond. See *id.* 64.02(a) (West Supp. 2016). In its response, the State averred that the knife was in the possession of the Tarrant County Sheriff's Office. On June 13, 2017, the trial court found that Manns had "no reasonable grounds for filing a subsequent motion" for forensic DNA testing and denied his request for the appointment of counsel. Manns now attempts to appeal this order.

II. JURISDICTION

We notified Manns that we were concerned we did not have jurisdiction over his appeal because the order appealed from is an interlocutory order that is not immediately appealable. See Tex. R. App. P. 26.2(a). We warned that we would dismiss his attempted appeal unless he or any party desiring to continue the appeal responded showing grounds establishing our jurisdiction. See Tex. R. App. P. 44.3. Manns responded but did not establish that we have jurisdiction over this appeal.

Although an order denying DNA testing is an “appealable order” under rule 26.2(a), the decision to deny appointed counsel is not. *Gutierrez v. State*, 307 S.W.3d 318, 321, 323 (Tex. Crim. App. 2010). The trial court’s order that Manns now appeals denied his request for appointed counsel. It did not deny a subsequent motion for forensic DNA testing, nor is there such a motion in the record before us.

III. CONCLUSION

Because Manns attempts to appeal the trial court’s denial of his motion for appointment of counsel rather than a final order denying a motion for forensic DNA testing, we have no jurisdiction to consider his appeal. See *id.* at 322–23. Accordingly, we dismiss this appeal for want of jurisdiction. See *id.*; see also Tex. R. App. P. 43.2(f).

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: SUDDERTH, C.J.; GABRIEL and KERR, JJ.

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

DELIVERED: October 19, 2017