

NO. 07-00-0461-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
OCTOBER 5, 2004

JOSE ZUNIGA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE 106TH DISTRICT COURT OF LYNN COUNTY;
NO. 98-2419; HONORABLE GENE DULANEY, JUDGE

Before JOHNSON, C.J., and QUINN and REAVIS, JJ.

**ORDER ON STATE'S MOTION TO REVOKE BOND ISSUED UNDER
ARTICLE 44.04(h) AND REQUEST FOR ISSUANCE OF WARRANT**

Following this Court's reversal of appellant's conviction and his release on a \$50,000 bond, the State filed a petition for discretionary review that was granted. On April 26, 2004, the Court of Criminal Appeals reversed our decision and following the issuance of its

mandate on June 17, 2004, remanded the case for further proceedings. On August 2, 2004, pursuant to directions from the higher court, we re-examined appellant's case and issued an opinion affirming his conviction. Shortly thereafter, pursuant to article 44.04(h) of the Texas Code of Criminal Procedure (Vernon Pamph. Supp. 2004-05), the State moved to have appellant's bond revoked and also requested that *capias* issue for his arrest. We overrule the motion.

Article 44.04(h) provides in pertinent part that following a reversal by a court of appeals, a defendant is entitled to be released on bail *pending final determination of an appeal by the state or the defendant on a motion for discretionary review*. (Emphasis added). The State relies on this statute, but provides no other authority in support of its position that once mandate was issued by the Court of Criminal Appeals on June 17, a final determination was made on its petition for discretionary review. The State, however, ignores that portion of the statute that also allows appellant to file a petition for discretionary review challenging our opinion of August 2 affirming his conviction and pursuing it to a final determination. Accordingly, the State's motion is overruled.

It is so ordered.

Don H. Reavis
Justice

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