

NO. 07-06-0211-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL D
FEBRUARY 28, 2007

ERSKINE L.T. ALLEN, JR.,

Appellant

v.

THE STATE OF TEXAS,

Appellee

FROM THE 137TH DISTRICT COURT OF LUBBOCK COUNTY;
NO. 22580; HON. CECIL G. PURYEAR, PRESIDING

Order Dismissing Appeal

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Erskine L.T. Allen, Jr. (appellant) filed a notice of appeal from the trial court's order denying his request for DNA testing pursuant to article 64 of the Code of Criminal Procedure. However, our review of the record did not disclose a written order nor was a hearing held wherein the trial court made an oral pronouncement denying appellant's

request. Our review did find a handwritten notation on appellant's motions purportedly written by the trial court stating that no action would be taken. Therefore, we abated the matter back to the trial court to determine whether a final appealable order had been rendered in this cause.

A hearing was held by the trial court pursuant to this court's abatement order. Furthermore, the trial court made findings which have been filed with this court in a supplemental clerk's record. According to the clerk's record, the trial court found that the handwritten notation was not a final, appealable order and that appellant's motion for DNA testing is still pending.

Accordingly, we dismiss the appeal for lack of jurisdiction. See *McIntosh v. State*, 110 S.W.3d 51, 52-53 (Tex. App.—Waco 2002, no pet.).

Brian Quinn
Chief Justice

Do not publish.
