

NO. 07-12-00094-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
JUNE 14, 2012

ERASMO GONZALES, APPELLANT

v.

THE STATE OF TEXAS, APPELLEE

FROM THE 69TH DISTRICT COURT OF DALLAM COUNTY;
NO. 3320; HONORABLE RON ENNS, JUDGE

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

ORDER ON DISMISSAL

Appellant, Erasmo Gonzales, filed a notice of appeal with this Court on March 6, 2012, seeking review of the 69th District Court’s “general denial” of appellant’s motion for post-conviction DNA testing. On March 13, this Court sent appellant notice that it appears that the trial court had not signed or entered a final, appealable order acting on his motion. By this letter, appellant was directed to show how this Court has jurisdiction over this appeal on or before April 2. On March 26, appellant filed a document entitled “Motion to Show Cause – Jurisdiction,” which contends that, even though no final judgment has been entered in this cause, this Court can exercise jurisdiction over this

appeal because (1) the trial court has failed to appoint counsel to appellant to assist him in filing his motion for DNA testing, and (2) because appellant's underlying conviction is void because appellant was not admonished regarding his need to register as a sex offender.¹ On April 3, the clerk's record in this cause was filed.

Under Article V, section 6 of the Texas Constitution, this Court has jurisdiction over "all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law." TEX. CONST. art. V, § 6. Article 44.02 of the Code of Criminal Procedure provides, in pertinent part, "[a] defendant in any criminal action has the right of appeal." TEX. CODE CRIM. PROC. ANN. art. 44.02 (West 2006). Though the statute does not contain the limitation on its face, article 44.02 allows an appeal only from a final judgment of conviction. State v. Sellers, 790 S.W.2d 316, 321 n.4 (Tex.Crim.App. 1990).

This Court does not have jurisdiction over interlocutory criminal appeals unless our jurisdiction is "expressly granted by law." Benford v. State, 994 S.W.2d 404, 409 (Tex.App.—Waco 1999, no pet.) (citing Apolinar v. State, 820 S.W.2d 792, 794 (Tex.Crim.App. 1991)). Appellant has failed to cite this Court to any express statutory grant of authority over a trial court's interlocutory denial of a request for counsel to assist in filing a motion for DNA testing. See Watkins, 155 S.W.3d at 634 (citing McIntosh v. State, 110 S.W.3d 51, 52-53 (Tex.App.—Waco 2002, no pet.)).

¹ Clearly, even if such a contention can be challenged by appeal, this contention is wholly inappropriate for this Court to consider in an appeal from an alleged denial of a motion for post-conviction DNA testing. See Watkins v. State, 155 S.W.3d 631, 634 (Tex.App.—Texarkana 2005, no pet.).

A review of the clerk's record confirms appellant's statement that a final, appealable judgment or order has not been filed in this case. As such, we now dismiss this appeal without prejudice to refiling upon the trial court's entry of a final, appealable judgment or order.²

Per Curiam

Do not publish.

² If the trial court fails to enter a final, appealable judgment or order, appellant could obtain recourse by filing a petition for writ of mandamus. See In re Rodriguez, 77 S.W.3d 459, 461-62 (Tex.App.--Corpus Christi 2002, orig. proceeding).