



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-17-00073-CR

ROCKY A. HILL, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 137th District Court
Lubbock County, Texas
Trial Court No. 2008-419,474; Honorable John J. "Trey" McClendon III, Presiding

April 7, 2017

CONCURRING OPINION

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

I join the opinion of the court; however, I write separately to clarify that Appellant is not without a legal remedy pertaining to the relief he seeks. By a post-conviction motion, Appellant, Rocky A. Hill, sought to unseal certain records (psychiatric evaluations) contained in the record of his underlying conviction, for the purpose of “put[ting] together [a] petition for habeas corpus.” Finding that Appellant’s *Motion to Disclose Sealed Records* did not properly invoke the jurisdiction of the trial court, this

court finds that it too is without jurisdiction to review the trial court's denial of the relief requested.

Generally, in a criminal case, a defendant has the right to appeal "a judgment of guilt or other appealable order." See TEX. R. APP. P. 25.2(a)(2). Furthermore, if a defendant is the appellant, the record must include the trial court's certification of the defendant's right of appeal under Rule 25.2(a)(2). See TEX. R. APP. P. 25.2(d). Here, Appellant has cited us to no authority, and we find none, stating that a post-conviction motion to unseal records, unassociated with a *pending* habeas corpus proceeding properly invoking the jurisdiction of the trial court, is an "appealable order." Because it is also not "a judgment of guilt," Appellant has failed to properly invoke the jurisdiction of this court.

While the Court of Criminal Appeals has the ultimate jurisdiction to determine a post-conviction application for a writ of habeas corpus, the jurisdiction of the trial court (the "convicting court") is properly invoked by the filing of that application. See TEX. CODE CRIM. PROC. ANN. art. 11.07, §§ 3, 5 (West 2015). The convicting court's jurisdiction includes the authority to resolve all matters necessary to the determination of whether there are controverted, previously unresolved facts material to the legality of the applicant's conviction. *Id.* at art. 11.07, § 3(c). Intermediate appellate courts have no jurisdiction over criminal law matters pertaining to habeas corpus proceedings under article 11.07. *Flaming v. State*, Nos. 07-15-00073-CR, 07-15-00074-CR, 2015 Tex. App. LEXIS 3063 (Tex. App.—Amarillo March 30, 2015, no pet.). To complain about the convicting court's action, or inaction, in a post-conviction habeas corpus proceeding,

an appellant must seek relief from the Court of Criminal Appeals. *In re Briscoe*, 230 S.W.3d 196, 196-97 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding).

Here, Appellant sought to obtain access to sealed materials he contended were relevant to a proposed *future* application for writ of habeas corpus. Because he has yet to file an application for habeas corpus invoking the jurisdiction of the trial court, the appropriate disposition would have been to *dismiss* his *Motion to Disclose Sealed Records* for want of jurisdiction rather than to *deny* it. Although not specifically designated as a *dismissal* for want of jurisdiction, we hold the trial court did not reversibly err in denying Appellant's motion.¹

Patrick A. Pirtle
Justice

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¹ The scant record before this court does not contain a copy of the order denying the requested relief. We construe the order of the trial court as an order dismissing Appellant's motion for want of jurisdiction. Our disposition does not preclude the refiling of the motion should the jurisdiction of the trial court be properly invoked by the filing of an application for habeas corpus.