In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-17-00399-CR

DEWEY MACK EVANS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 47th District Court
Randall County, Texas
Trial Court No. 19,095-A; Honorable Dan L. Schaap, Presiding

October 25, 2017

MEMORANDUM OPINION

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

Appellant, Dewey Mack Evans, an inmate proceeding *pro se*, attempts to appeal the trial court's order denying his motion to borrow the clerk's record and reporter's record from the trial court clerk. We dismiss the appeal for want of jurisdiction.

In 2007, Appellant was convicted of aggravated kidnapping[1] and sentenced to eighty years imprisonment. We affirmed his conviction in *Evans v. State*, No. 07-07-00377-CR, 2009 Tex. App. LEXIS 150 (Tex. App.—Amarillo Jan. 9, 2009, pet. ref'd) (mem. op., not designated for publication). On September 25, 2017, Appellant filed a *Motion for Intra Loan of Reporter and Clerk Records* in the trial court. By his motion, Appellant requested that the trial court allow him to borrow the trial court clerk's copy of the clerk's record and reporter's record for thirty days, through the prison's "Intra Library Loan Program," so that he might prepare a petition for writ of habeas corpus.[2] For reasons that are not apparent to this court, the trial court denied that motion and Appellant filed a notice of appeal.

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). An "appealable order" is only appealable where specifically authorized by a statutory or constitutional provision. *See Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014); *Abbott v. State*, 271 S.W.3d 694, 696–97 (Tex. Crim. App. 2008) ("The standard for determining jurisdiction is not whether the appeal is precluded by law, but whether the appeal is authorized by law.").

In that regard, Appellant has cited us to no legal authority indicating that an order denying a motion for access to an appellate record is an appealable order and we find no Texas case so holding. To the contrary, our research has revealed precedent

[1] TEX. PENAL CODE ANN. § 20.04 (West 2011).

[2] In a criminal case where a record has been prepared for purposes of a direct appeal, the trial court clerk must retain a copy of both the Clerk's Record and the Reporter's Record for the parties' use with the court's permission. *See* TEX. R. APP. P. 34.5(g), 34.6(h).

holding that a trial court's denial of a request for access to the record is not an appealable order. *In re Williams*, No. 09-01-00205-CV, 2001 Tex. App. LEXIS 3975, at *5 (Tex. App.—Beaumont June 14, 2001, orig. proceeding) (mem. op.). Because the order being appealed is neither a judgment nor an appealable order, we are without jurisdiction to grant Appellant any relief.[3]

Accordingly, this appeal is dismissed for want of jurisdiction.

Per Curiam

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[3] Although an order denying a motion to borrow the clerk's record and reporter's record is neither a judgment of guilt nor an appealable order, Appellant is not without a remedy. In a criminal case where a record has been prepared for purposes of a direct appeal, the trial court clerk must retain a copy of both the clerk's record and the reporter's record for the parties' use with the court's permission. *See* TEX. R. APP. P. 34.5(g), 34.6(h). Where a trial court has denied a party access to that record, access might be gained through a writ of mandamus issued pursuant to Rule 52.3 of the Texas Rules of Appellate Procedure. *See In re Williams*, 2001 Tex. App. LEXIS 3975, at *5-6 (stating that mandamus might issue to compel the trial court to order the trial court clerk to release a duplicate record to an inmate). *See also In re Fitts*, No. 07-98-00374-CV, 1999 Tex. App. LEXIS 36 (Tex. App.—Amarillo Jan. 5, 1999, orig. proceeding) (indicating that mandamus might lie to enforce a party's "important right of access" to the clerk's record and reporter's record maintained by the trial court clerk pursuant to Rules 34.5(g) and 34.6(h)).