In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-15-00189-CR

DONALD GENE SHELBY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 336th District Court
Fannin County, Texas
Trial Court No. CR-12-24433

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Burgess

MEMORANDUM OPINION

In accordance with the terms of a plea agreement, Donald Gene Shelby pled guilty to and was convicted of driving while intoxicated (DWI), third or more, in the 336th Judicial District Court of Fannin County under trial court cause number CR-12-24433. On February 7, 2013, the trial court imposed a fifteen-year sentence for that crime, which was precisely the sentencing recommendation agreed to by Shelby and the State. Shelby had no right of direct appeal from that judgment and did not attempt such an appeal.

On August 10, 2015, Shelby then filed a pleading titled "Motion Nunc Pro Tunc" in the 336th Judicial District Court under cause number CR-12-24433. While it is not altogether clear exactly what error Shelby was complaining about or how the entry of a nunc pro tunc judgment would correct that alleged error, his motion unquestionably sought the entry of a nunc pro tunc judgment as a means of correcting some perceived clerical error in an indictment.[1] On October 16, 2015, the trial court signed an order denying Shelby's motion, and Shelby filed this direct appeal from that order.

As a general rule, the Texas Legislature has only authorized appeals by criminal defendants from written judgments of conviction. *See Gutierrez v. State*, 307 S.W.3d 318, 321 (Tex. Crim. App. 2010); *Ex parte Shumake*, 953 S.W.2d 842, 844 (Tex. App.—Austin 1997, no pet.). There are a few very limited exceptions to this general rule, *see Wright v. State*, 969 S.W.2d 588, 589

[1]Shelby's motion is anything but a model of clarity, and it is impossible to tell from the face of the motion whether he claims the clerical error was in the indictment returned in trial court cause number CR-12-24433 or in one of the indictments returned in the cases utilized by the State in his enhancement allegations.

(Tex. App.—Dallas 1998, no pet.), but in the absence of an appealable judgment or order, we are without jurisdiction to hear an appeal. The trial court's order denying Shelby's request for the entry of a judgment nunc pro tunc is not an order from which the Texas Legislature has authorized an appeal. *See Wilson v. State*, No. 02-12-00382-CR, 2013 WL 257278, at *1 (Tex. App.—Fort Worth Jan. 24, 2013, no pet.) (mem. op., not designated for publication) (op. on motion for reh'g) ("An order denying a motion for judgment nunc pro tunc is not appealable.").

By letter dated December 23, 2015, we notified Shelby of this potential defect in our jurisdiction and afforded him the opportunity to respond. Shelby filed a response in which he correctly notes that nunc pro tunc judgments are appealable orders. *See Blanton v. State*, 369 S.W.3d 894, 903 (Tex. Crim. App. 2012). Shelby then posits that, because a nunc pro tunc judgment is appealable, then the denial of a motion to enter a nunc pro tunc judgment should also be appealable. Shelby's theory is premised on the incorrect notion that a nunc pro tunc judgment is the equivalent of an order granting a motion to enter a nunc pro tunc judgement. If an order granting a motion to enter a nunc pro tunc judgment is appealable, Shelby theorizes, then an order overruling such a motion is also appealable. The flaw in Shelby's logic is that a judgment nunc pro tunc and an order granting a motion to enter a judgment nunc pro tunc are not the same thing. It is the nunc pro tunc judgment itself that is appealable, not the ruling on any motion filed to secure the entry of that judgment.

As the trial court's order denying Shelby's motion for entry of a judgment nunc pro tunc is not an appealable order, we lack jurisdiction to hear this appeal.

We dismiss this appeal for want of jurisdiction.

Ralph K. Burgess
Justice

Date Submitted: January 28, 2016
Date Decided: January 29, 2016

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