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

No. 06-15-00210-CR

PATRICK ORTEGA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 336th District Court
Fannin County, Texas
Trial Court No. CR-12-24239

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

MEMORANDUM OPINION

In accordance with the terms of a plea agreement, Patrick Ortega pled guilty to and was convicted of aggravated sexual assault in the 336th Judicial District Court of Fannin County under trial court cause number CR-12-24239.[1] On August 29, 2012, the trial court imposed a twenty-year sentence for that crime, which was precisely the sentencing recommendation agreed to by Ortega and the State. Ortega had no right of direct appeal from that judgment and did not attempt such an appeal.

On October 23, 2015, Ortega then filed a pleading titled "Motion For Nunc Pro Tunc Order" in the 336th Judicial District Court under cause number CR-12-24239.[2] All eleven of the sentences assessed against Ortega were ordered by the trial court to run concurrently, and, in each of the eleven cases, Ortega was ordered to pay court costs of either $599.00 or $649.00. In his "Motion For Nunc Pro Tunc Order," Ortega claimed that, because his eleven sentences were to run concurrently, he was liable for the cost assessment in only one of the eleven cases.[3]

[1]As part of this plea agreement, Ortega pled guilty to eleven separate felonies: three counts of aggravated sexual assault, three counts of aggravated sexual assault of a child, and five counts of indecency with a child by sexual contact. Each charge was filed under a separate trial court cause number; consequently, there were eleven judgments of conviction entered against Ortega as a result of his guilty pleas.

[2]Ortega filed identical motions under each of the eleven trial court cause numbers that were part of the 2012 plea agreement. He has appealed from the denial of his motion in each case. We address each of these appeals in separate opinions in our cause numbers 06-15-00204-CR, 06-15-00205-CR, 06-15-00206-CR, 06-15-00207-CR, 06-15-00208-CR, 06-15-00209-CR, 06-15-00211-CR, 06-15-00212-CR, 06-15-00213-CR, and 06-15-00214-CR.

[3]While Ortega's motion is not crystal clear on this issue, we assume Ortega's argument is premised on logic similar to the following: (1) as a result of the concurrent running of his eleven sentences, Ortega is required to serve only one—the longest—sentence; (2) the trial court's order applies not only to the punishments assessed in each of the eleven causes, but to any cost assessments as well; (3) consequently, Ortega is required to pay only one cost assessment. It is unclear whether Ortega contends that this result is mandated by the law or that this was the intended result of the parties' plea agreement and of the trial court when sentence was pronounced. As we are without jurisdiction to address the merits of this appeal, we offer no comment on the validity of any portion of Ortega's argument.

Consequently, Ortega's motions asked the trial court to revise its judgments in each of the eleven cases to indicate that the cost assessments run concurrently as well. His motion unquestionably sought the entry of a nunc pro tunc judgment as a means of correcting this perceived clerical error in each of the judgments entered against him. On November 3, 2015, the trial court signed an order denying Ortega's motion, and Ortega filed this direct appeal from that order.

As a general rule, the Texas Legislature has authorized appeals by criminal defendants only 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 (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 Ortega'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 Everett v. State*, 82 S.W.3d 735, 735 (Tex. App.—Waco 2002, pet. dism'd) ("No statute vests this Court with jurisdiction over an appeal from an order denying a request for judgment nunc pro tunc."); *Allen v. State*, 20 S.W.3d 164, 165 (Tex. App.—Texarkana 2000, no pet.) (order denying motion for entry of judgment nunc pro tunc not appealable; any attack on such order must be brought through mandamus proceeding).

By letter dated February 2, 2016, we notified Ortega of this potential defect in our jurisdiction and afforded him the opportunity to respond. Ortega filed a response in which he posits that, because he filed the motion pro se, he simply did not caption it correctly. He states that the substance of the motion requests clarification of whether the eleven notices to withdraw

funds[4] issued by the trial court to the Texas Department of Criminal Justice Correctional Institutions Division (TDCJ–CID) authorized the TDCJ–CID to cumulate his court costs. Ortega asks this Court to so construe his motion filed in the trial court and the relief requested on appeal.

We addressed this issue in detail in our opinion of this date on Ortega's appeal in cause number 06-15-00204-CR. For the reasons stated therein, we likewise conclude that we have no jurisdiction over this appeal.

We dismiss this appeal for want of jurisdiction.

Josh R. Morriss, III
Chief Justice

Date Submitted: February 18, 2016
Date Decided: February 19, 2016

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[4]These notices, referred to by Ortega as withdrawal orders, were not made a part of the record in this attempted appeal.