



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

No. 06-15-00227-CR

CLIFFORD BERNARD NELSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 1
Gregg County, Texas
Trial Court No. 2013-1871

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

MEMORANDUM OPINION

Clifford Bernard Nelson was convicted in October 2014 of misdemeanor family violence assault causing bodily injury. The trial court sentenced Nelson October 20 to 350 days in jail and fined him \$500.00. In addition, the trial court assessed \$322.00 in court costs against Nelson. Nelson filed a direct appeal to this Court challenging that judgment, and on August 4, 2015, we issued a memorandum opinion affirming the lower court's judgment in all respects. Our mandate in that matter issued September 29, 2015. In his direct appeal, Nelson lodged no complaints specific to either the fine or the cost assessment.

On December 14, 2015, after Nelson had served his jail sentence, the parties appeared before the trial court on a hearing concerning collection of the \$822.00 in fines and costs that were part of the trial court's original judgment of conviction. No motion or petition appears in the record supporting a request for a hearing of any type.

At some point following that hearing, but on the same day, the trial court signed an order titled "Order Denying Post-Mandate Reconsideration of Fine and Court Costs." Nelson attempts to appeal from this order.¹

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

¹It is not entirely clear what relief Nelson requested at the trial court hearing, but he appeared to suggest that, because he was incarcerated for a longer period of time than the sentence mandated by the trial court's judgment, he had satisfied the fine and cost assessment by laying them out in jail. It is not at all clear that the trial court discerned this argument based on our review of the reporter's record.

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 post-mandate reconsideration of fines and court costs is not an order from which the Texas Legislature has authorized an appeal.

By letter dated February 12, 2016, we notified Nelson of this potential defect in our jurisdiction and afforded him the opportunity to respond. Nelson filed a response in which he generally cites to Articles 43.03 and 45.53² of the Texas Code of Criminal Procedure, but fails to articulate how these statutes afford him a right of appeal from the trial court’s order in this case. *See* TEX. CODE CRIM. PROC. ANN. arts. 43.03, 45.046 (West Supp. 2015). Article 43.03 requires a trial court to conduct a hearing before confining a defendant who has defaulted on his fines and/or court costs. *See* TEX. CODE CRIM. PROC. ANN. art. 43.03(a). Here, however, the trial court did not order Nelson confined for the failure to pay his fines and court costs.³

²Former Article 45.53 of the Texas Code of Criminal Procedure was renumbered in 1981 by the Legislature as Article 45.046 of the Texas Code of Criminal Procedure. *See* Act of June 1, 1981, 67th Leg., R.S., ch. 708, § 3, 1981 Tex. Gen. Laws 2647, 2648 (amended 1999) (current version at TEX. CODE CRIM. PROC. ANN. art 45.046 (West Supp. 2015)).

³On the other hand, “[a] defendant who has completed [his] sentence may, through a habeas petition, request an article 43.03 hearing to determine whether [his] continued confinement for the purpose of discharging fines and court costs is justified.” *Ex parte Ybarra*, Nos. 03-14-00683-CR, 03-14-00684-CR, 03-14-00685-CR, 03-14-00686-CR, 03-14-00687-CR, 2014 WL 6617242, at *2 (Tex. App.—Austin Nov. 17, 2014, no pet.) (mem. op., not designated for publication). *Ybarra* involved a defendant who completed her 300-day jail sentence, but remained incarcerated for the purpose of “laying out” her fines and court costs. *Id.* at *1. *Ybarra* filed a motion for an indigency hearing, asserting that her continued confinement for failure to pay fines was unlawful because the trial court failed to conduct a hearing and failed to make appropriate findings as required by Article 43.03 of the Texas Code of Criminal Procedure. *Id.* The appellate court determined that, given the nature of *Ybarra*’s motion, it should be construed as a petition for writ of habeas corpus. *Id.* at 2. This case is different from *Ybarra* in many respects, one of which is the fact that Nelson did not file any type of motion or petition in the trial court seeking relief from the continued imposition of fines and court costs. Here, unlike *Ybarra*, Nelson was not confined at the time of the hearing, but had served his sentence and had been released from confinement.

Nelson also cites—again without explanation or discussion—to *Johnson v. State*, 423 S.W.3d 385 (Tex. Crim. App. 2014), as an additional source for our jurisdiction over this appeal. *Johnson*, though, has to do with the appropriate manner in which to challenge the basis of assessed court costs and, thus, does not apply to the question of our jurisdiction in this case.

Finally, Nelson relies on *Tate v. Short*, 401 U.S. 395, 399 (1971), for the proposition that the State cannot “limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine.” While we have no reason to question this proposition, it is wholly irrelevant to the issue of our jurisdiction to hear this appeal.

We, therefore, conclude that this Court does not have jurisdiction over this attempted appeal.

We dismiss this appeal for want of jurisdiction.

Josh R. Morriss, III
Chief Justice

Date Submitted: March 1, 2016

Date Decided: March 2, 2016

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Because Article 45.046 largely mirrors Article 43.03 and because it applies to only justice and municipal courts, we need not address Nelson’s contention that Article 45.046 provides this Court jurisdiction over his attempted appeal.