IN THE
TENTH COURT OF APPEALS

No. 10-14-00401-CR

EX PARTE WILLIAM M. WINDSOR

From the 40th District Court
Ellis County, Texas
Trial Court No. 14-158

MEMORANDUM OPINION

After he had participated in a hearing in a civil suit in district court in Ellis County on October 28, 2014, Appellant William M. Windsor was taken into custody by the Ellis County Sheriff's Department pursuant to an arrest warrant (a bench warrant) from Missoula County, Montana for three alleged felonies and two alleged misdemeanors with bail preset at $100,000.[1]

[1] The offenses pertain to Windsor's alleged violations of a Montana order of protection. For background purposes only, we note that Windsor asserts that he is a documentary filmmaker and has been working on "Lawless America," a documentary film about government, judicial, and law-enforcement corruption. Windsor alleges that shortly after he began working on the film, he began to be "harassed, threatened, and cyberstalked by Sean Boushie, an employee of the University of Montana in Missoula, Montana." It appears that the Montana order of protection arose out of Windsor's alleged stalking of Boushie in Montana and was served on Windsor while he was filming at the University of Montana. *See Boushie v. Windsor*, 328 P.3d 631 (Mont. 2014).

Windsor was taken to the Ellis County Jail and was arraigned the next day (October 29) before a magistrate (a justice of the peace), who set bail for Windsor at $100,000.[2] In an order signed on November 21, 2014, the trial court ordered Windsor "committed to jail to await the issuance of a governor's warrant of extradition." The order further set a hearing for December 19 "to determine if a governor's warrant has been issued" and also noted that bail had been set at $100,000. That order was entered in conjunction with a November 21 "extradition hearing" where Windsor appeared without counsel and refused to waive extradition and be immediately returned to Montana. Also in the hearing, Windsor referred to a pro se habeas application that he had attempted to file on November 18, but he said that it had been returned unfiled.[3] Windsor also complained that he had attempted to arrange for posting a bond[4] and that Montana would not accept a Texas bond or a Montana bond.

The reporter's record of a proceeding held on November 25 indicates that Windsor had filed another pro se habeas application on November 21, and the trial court stated to Windsor that it did not have habeas jurisdiction but only jurisdiction for extradition, which Windsor was refusing to waive.[5] Windsor again recounted that Montana had

[2] We do not have a reporter's record of the arraignment proceeding.

[3] At the November 25 hearing discussed next, the trial court indicated that Windsor's pro se application had not been filed by the clerk "because they don't have jurisdiction of it."

[4] It appears that Windsor was complaining about failed attempts to post the $100,000 Montana bond, not a bond for the $100,000 bail set by the magistrate at the October 29 arraignment. There was further confusion when Windsor appeared to complain that Ellis County would not accept a Texas bond that he had arranged. We discuss this confusion in detail below.

[5] The November 21 order states that Windsor had been informed "that he has a right to file a writ of habeas corpus." *Cf.* TEX. CODE CRIM. PROC. ANN. art. 51.13, § 10(a) (West Supp. 2014) (providing for prisoner's

refused to accept a Texas bond or a Montana bond. Once Windsor's bail was set at $100,000 at his October 29 arraignment, it is unclear to us what role Montana would have had in his posting a bail bond, which was set in accordance with Texas law. *See* TEX. CODE CRIM. PROC. ANN. art. 51.13, § 16 ("Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the State in which it was committed, a judge or magistrate in this State may admit the person arrested to bail by bond, with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor in this State.").

On December 2, an attorney for Windsor filed an "application for writ of habeas corpus seeking bail and/or bail reduction and challenging legality of arrest pursuant to article 51.13, § 10 (Tex. Code Crim. Proc.)." It alleged that Windsor was being illegally confined for more than thirty days without a Governor's warrant, in violation of sections 15 and 17 of article 51.13 of the Code of Criminal Procedure, and because of the Ellis County Sheriff's failure to accept a bail bond.[6] Finally, the application asserted that the

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right to file habeas application after arrest under a governor's warrant). Because the habeas application that was being discussed at the November 25 proceeding is not in the clerk's record, we cannot ascertain a rationale for the trial court's comments.

[6] The record—especially the record of the subsequent December 5 hearing discussed below—reflects continued confusion over Windsor posting bond and being released under article 51.13, section 16, and also reflects that Ellis County jail authorities were allegedly refusing to accept any bond for Windsor's release under the apparent assumption that Windsor had to satisfy the Montana bail to be released. It appears that everyone in the court below failed to understand the purpose of the $100,000 bail set by the magistrate at Windsor's arraignment and that bail's distinction from the preset $100,000 Montana bail set on the charges in the Montana bench warrant. The purpose of bail under article 51.13, section 16 is to secure the person's appearance in the asylum state's (Texas) court for further extradition proceedings and for the person's surrender if a Texas Governor's warrant issues. *See* TEX. CODE CRIM. PROC. ANN. art. 51.13, § 16; *see also Ex parte Walker*, 350 S.W.3d 417, 419 (Tex. App.—Eastland 2011, pet. ref'd) (identifying asylum state

$100,000 bail is excessive. The application sought either Windsor's discharge or bail in a reasonable amount conditioned on Windsor's appearance at the December 19 hearing.

Section 15 provides:

> If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and except in cases arising under Section 6, that he has fled from justice, the judge or magistrate must, by warrant reciting the accusation, commit him to the county jail for such time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the Executive Authority of the State having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

Id. art. 51.13, § 15.

As noted above, Windsor was taken into custody on October 28—without a Texas arrest warrant but on a probable-cause affidavit of Ellis County Sheriff's Deputy Matt Overcash pursuant to the Montana bench arrest warrant—and was arraigned on October 29.[7] It appears that Windsor was not taken before a judge or magistrate until November 21. *See id.* art. 51.13, § 14 ("when so arrested the accused must be taken before a judge or magistrate *with all practicable speed* and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section") (emphasis added); *see also Ex parte Wall*, No. 02-11-00326-CR, 2012 WL 5869595, at *7 (Tex. App.—Fort Worth Nov. 21, 2012, no pet.) (mem. op., not designated for publication) (concluding "that under

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and demanding state). This bail is unrelated to any bail set in the demanding state (Montana). *Cf. Drake v. Spriggs*, No. 13-03-00429-CV, 2006 WL 3627716, at * 1 & n.4 (Tex. App.—Corpus Christi Dec. 14, 2006, no pet.) (mem. op.).

[7] The arresting officer's testimony at the subsequent December 19 hearing confirms that Windsor was not arrested under a Texas warrant.

the facts of this case, fifteen days was not an unreasonable amount of time for the fugitive warrant to be issued").

Section 17 provides:

> If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in Section 16, but within a period not to exceed sixty days after the date of such new bond.

Id. art. 51.13, § 17.

A hearing was held on the habeas application on December 5. Windsor's attorney argued that Windsor had been committed to jail for more than thirty days, that the most he could be committed was ninety days under sections 15 and 17, and that because the court had not extended the commitment for up to sixty days under section 17, Windsor should be discharged. The State responded by asserting that article 51.05 of the Code of Criminal Procedure applied and that it allows for commitment for no longer than ninety days. That article provides:

> When the accused is brought before the magistrate, he shall hear proof, and if satisfied that the accused is charged in another State with the offense named in the complaint, he shall require of him bail with sufficient security, in such amount as the magistrate deems reasonable, to appear before such magistrate at a specified time. In default of such bail, he may commit the defendant to jail to await a requisition from the Governor of the State from which he fled. A properly certified transcript of an indictment against the accused is sufficient to show that he is charged with the crime alleged. One arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days.

Id. art. 51.05 (West 2006).

The State then argued that the thirty-day time period set forth in section 15 of

article 51.13 was not triggered until Windsor appeared in district court at the November 21 hearing because, the State asserted, Windsor's October 29 arraignment had been before a justice of the peace, and only a court of proper jurisdiction can trigger the extradition procedures, including section 15's thirty-day window, under article 51.13.[8] *But see id.* art. 51.13, § 10(b) (providing that a justice of the peace who is not an attorney may conduct the section 10(a) hearing if the justice has taken an extradition-law training course).[9] At the subsequent December 19 hearing where he appeared pro se, Windsor challenged the State's time-period argument and asserted that the article 51.13 time period began when he was arrested on October 28. Because of our disposition of this appeal, we need not decide this issue.

We next note the legislative confusion within Chapter 51 of the Code of Criminal Procedure. One treatise explains that confusion as follows:

> A potential problem was created in 1964 [*sic*] when the State of Texas not only reenacted the Uniform Criminal Extradition Act [article 51.13], but also reenacted all of the provisions of the old extradition act (presently Articles 51.01 through 51.12 of the Code of Criminal Procedure) in existence

[8] As authority for its position, the State cited and argued *Ex parte Wall,* No. 02-11-00326-CR, 2012 WL 5869595 (Tex. App.—Fort Worth Nov. 21, 2012, no pet.) (mem. op., not designated for publication), a case that Windsor's attorney had cited in the habeas application. We do not read *Wall* as support for the State's position on when Windsor's thirty-day time period commenced because the facts in *Wall* are quite dissimilar. There Wall had originally been arrested and jailed for the commission of two criminal offenses in Denton County, Texas, and thereafter Texas authorities learned that Wall was an alleged fugitive escapee from Mississippi. Therefore, a "no-bond hold" (or detainer) was placed on Wall, who otherwise did not attempt to post bond on the two Denton County cases and remained jailed on the Denton County charges. The principal issue on appeal was whether Wall had been illegally confined beyond ninety days; *i.e.*, whether the ninety-day time periods in articles 51.05 and 51.07 commenced when Wall was originally arrested or when the trial court issued a fugitive warrant some ten months later and after Wall had served his Texas sentence. *Id.* at *2-3, 5-7. The court ultimately held that the illegal-confinement complaint was rendered moot by the issuance of the Governor's warrant. *Id.* at *5.

[9] To the extent that the State was referring to article 51.13, § 10's requirements for a justice of the peace, we question its applicability to the State's argument because that section applies only after an arrest under a Governor's warrant. *See* TEX. CODE CRIM. PROC. ANN. art. 51.13, §§ 7-10.

> prior to the enactment of the Uniform Criminal Extradition Act in 1951. There is no reference in the Code of Criminal Procedure as to how these acts are to be construed in relationship to each other. The practice in Texas, however, has been to follow the Uniform Criminal Extradition Act.

1 Chad P. Van Brunt, *Texas Criminal Practice Guide* § 13.01[2] (2015).

At the end of the December 5 hearing, the trial court stated that it was "denying a bond"[10] and would consider other options if there was not a Texas Governor's warrant at the time of the scheduled December 19 hearing. Thereafter, Windsor's attorney withdrew and Windsor appeared pro se at the December 19 hearing.

On December 17, Windsor's pro se notice of appeal was filed.[11] It purports to appeal the trial court's bond ruling at the December 5 hearing and the trial court's failure to release Windsor at the December 5 hearing and at all of the previous hearings. Also on December 17, Windsor filed a pro se amended habeas application that asserted numerous reasons why he should be released.

At the December 19 hearing, the trial court granted Windsor a personal recognizance (PR) bond in the amount of $100,000 but otherwise denied Windsor's amended habeas application. The order of release and the PR bond had the following conditions: (1) Windsor must turn over his passport; (2) Windsor must reside at a designated hotel in Richardson, Texas;[12] and (3) Windsor must inform the court

[10] We construe this ruling to be a denial of Windsor's request for bail reduction.

[11] Upon receipt of the December 17 notice of appeal on December 23, we docketed this appeal.

[12] The Richardson hotel's address was listed as Windsor's residence on the order of release, and the State noted on the record that that address would be used for notification purposes. The December 19 hearing was scheduled for 9:00 a.m. On December 19 at 1:53 p.m., Windsor filed a handwritten, one-page "notice of change of address for legal mail" that gives an address in Madison, South Dakota. This notice does not have a certificate of service that shows service of the notice on the State.

immediately if he changes his residence. The order further set a hearing for January 21, 2015 as an extension under article 51.13, section 16.

The trial court explained to Windsor on the record that if he did not appear on January 21, he would forfeit the $100,000 PR bond. After a discussion about what would happen if a Texas Governor's warrant issued,[13] the following colloquy then occurred:

> THE COURT: So be here on January 21st or if you decide to drive, then Montana will call us and let us know.[14]
>
> THE DEFENDANT: Okay.
>
> THE COURT: Okay?
>
> THE DEFENDANT: So sounds like it would be acceptable if I were to decide to go there, turn myself in, I'm not screwing up $100,000 bond?
>
> THE COURT: I do not think so. Looks like from what I read in the code that you can turn yourself in. Just don't be traveling on that day [January 21] doing that.
>
> THE DEFENDANT: I won't.

Windsor was released under the PR bond, but he filed a second notice of appeal on December 19 that sought to appeal the trial court's denial of his pro se amended habeas application.

[13] The District Attorney stated that if the Governor's warrant issued before January 21, the State would seek to arrest Windsor at his hotel.

[14] Earlier in the hearing, Windsor had discussed with the court that, if the Governor's warrant actually issued, he hoped to be able to surrender in Montana, as opposed to being arrested and transported to Montana in custody.

Thereafter, the State filed a "request for emergency hearing and order of surrender" on December 29, 2014.[15] It alleged the following: That on December 26, the Ellis County Sheriff's Office received the Texas Governor's warrant for Windsor's arrest and attempted to arrest him at his Richardson hotel, but Windsor was not there and apparently was not residing there as of December 26. The State requested a hearing as soon as possible, and in an order signed on December 29, the trial court set a hearing on December 30, 2014 at 1:30 p.m. and ordered Windsor to surrender to the Ellis County Sheriff's Office on or before that date and time. The order further noted that Windsor's failure to appear at the hearing would result in forfeiture of his bond.

Windsor's attorney who had withdrawn appeared at the December 30 hearing, stating that Windsor had contacted her and said that he did not get notice of the hearing and did not know what the hearing was about, and that she was there "just in terms of trying to find out what today's hearing is about."[16] She also stated that Windsor had indicated to her that he had checked his post office box and had not received any kind of hearing notice at his post office box address.[17]

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[15] The certificate of service on the State's request states that it was served on Windsor by facsimile at his Richardson hotel.

[16] Plainly, by asking his former attorney to appear at the hearing, Windsor had some kind of notice of the hearing. In his brief, Windsor asserts that he left Texas on December 29 to drive to Montana and surrender himself.

[17] Nothing in the record supports the assertion that the State was required to serve Windsor at a post office box address. We noted above that the State had said on the record to the court and to Windsor at the December 19 hearing that the State would be using Windsor's Richardson hotel address for notifications; we further noted that Windsor's change-of-address notice lacks a certificate of service.

At the December 30 hearing, the State first reminded the trial court that it had informed Windsor at the December 19 hearing that if the Texas Governor's warrant issued, it would seek to arrest Windsor. The State then informed the trial court that the Texas Governor's warrant had issued on December 23, that on December 26, the Ellis County Sheriff's Office received the warrant for Windsor's arrest and attempted to arrest him at his Richardson hotel, but Windsor was not there and apparently was not residing there as of December 26. The State then asked the court to forfeit the PR bond because Windsor had failed to appear.

The prosecutor also noted that the court coordinator had informed him that Windsor had contacted her by telephone the day before to say that he would not be at the hearing but would appear by telephone. The State then presented the testimony of a deputy who had attempted to serve the warrant on Windsor at his hotel; the deputy was informed that Windsor had a room rented there until January 21, but after going in the room, it did not appear to be occupied. Windsor's car was also not at the hotel.

The State next presented the testimony of the court coordinator, who stated that she had received a phone call the day before from a person purporting to be Windsor. She said that she was familiar with Windsor's voice and that he told her that he would not be at the hearing the following day but would appear by telephone. Windsor also told her that someone had contacted him about the hearing.

After the bailiff had called out for Windsor with no response and the attorney had unsuccessfully attempted to telephone and email Windsor, the court stated:

> On December 19th when we were here I authorized a PR bond of $100,000, and it was instanter. Mr. Windsor asked several questions about that instanter that it meant if that governor's warrant came in Mr. Wilson or the Sheriff's deputies or someone would go out with the governor's warrant and arrest him. I made the date for the hearing - - the extradition hearing on January 21st of 2015, but informed Mr. Windsor and the State that if the warrant came in sooner we would move that date up earlier.
>
> Mr. Windsor gave me the address of the Marriott Courtyard as a condition of his PR bond because I did not want him to go anywhere but Montana if he was going anywhere. He told me that he was going to be living at the Marriott Courtyard in Richardson. He also was supposed to inform me if he leaves that residence, and if he traveled to Montana he was to call and let me know. The Court has no phone calls of any of that. He also left on the extradition appearance bond the address of the hotel and that phone number. He did not give any e-mail address for a way for the Court or the officers to reach him on that appearance bond. I am still setting the date for January 21st, 2015 at nine a.m. for the extradition hearing, but I am going to revoke his PR bond as I believe he has violated this condition of bond. I do not believe he is staying at the Marriott Courtyard. He has not contacted the Court.
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> He informed my office that he knew about the hearing and he was not going [to] be here but he would by phone which informs - - think --tells me he's not in Richardson and that concerns the Court.

Windsor's attorney then informed the trial court that Windsor had sent a motion to her to file for him but that she had not yet looked at it or filed it; she told the trial court that the motion states that Windsor was traveling to Montana that day to turn himself in to the authorities. The trial court then ruled that the bond was forfeited but that the order would not be signed until the next day if Windsor surrendered in Montana the next day. The trial court signed a December 30, 2014 judgment nisi forfeiting the $100,000 PR bond. Windsor filed a notice of appeal on January 15, 2015 that states that he is appealing the

trial court's orders at the December 30 hearing.[18]

After this case became at issue, Windsor filed a notice stating that he had been incarcerated in Idaho and then Montana, having been arrested in Idaho and then extradited from Idaho to Montana.

Windsor's pro se brief asserts nineteen issues relating to his arrest, detention, and incarceration in Ellis County and to the bail and habeas issues discussed above.[19] Those issues are:

1. Was William M. Windsor illegally detained and incarcerated in the Ellis County Texas Jail?
2. Were William M. Windsor's rights violated when he was not read his rights?
3. Should William M. Windsor have been released by the Ellis County Texas Magistrate on October 29, 2014 when there was no finding of probable cause?
4. Was William M. Windsor illegally denied bail from October 29 to December 19, 2014?
5. Did William M. Windsor and do all people detained on extradition in Texas have a right to a Texas bond, not a bond from the state seeking to extradite them?
6. Was William M. Windsor illegally denied discharge pursuant to Texas Code of Criminal Procedure ("TCCrP") Article 51?
7. Is William M. Windsor ordered discharged effective November 27, 2014 and should all subsequent orders and bonds issued in connection with his commitment be vacated?

[18] We address this notice of appeal below.

[19] The State asserts that we should not consider Windsor's issues because his brief fails (1) to cite to the record and (2) to frame his arguments so that the State can respond to them. We disagree with the State's second reason, but the State is correct that Windsor's brief does not cite to the clerk's record; it does contain some citations to the reporter's records that he has included in his appendix. In his reply brief, Windsor asserted that he has been unable to cite to the clerk's record because he is incarcerated in Idaho and his legal files were confiscated. Windsor later filed a "motion to supplement record" requesting that the sworn statement of facts in his brief be made a part of the record. That motion is denied; in an appeal, the record cannot be supplemented with matters that were not made a part of the record in the trial court. *See* TEX. R. APP. P. 34.5(a), (c). Regarding Windsor's failure to cite to the record, we invoke Rule 2 to suspend Rule 38.1's appellant's brief requirements to expedite this matter. *See id.* R. 2; *see also In re Marriage of Jordan*, 264 S.W.3d 850, 852 n.1 (Tex. App.—Waco 2008, no pet.) (stating that we review and evaluate pro se briefs with patience and liberality). We will, however, disregard Windsor's factual statements that are outside the record. *See In re Marriage of Hernandez*, No. 10-09-00136-CV, 2011 WL 3821995 at *3, n.3 (Tex. App.—Waco Aug. 10, 2011, no pet.) (mem. op.).

8. Was William M. Windsor denied due process, denied use of a law library, denied filing of his petition for writ of habeas corpus, and denied action by a judge on the petition for writ of habeas corpus?
9. Is the lack of access to a law library in the Ellis County Jail a violation of Constitutional rights?
10. Was the bond of $100,000 that was allegedly set excessive?
11. Did Ellis County Texas violate the cruel and unusual punishments clause of the Eighth Amendment of the United States Constitution?
12. Did Ellis County Texas Judge Cindy Ermatinger violate William M. Windsor's rights when she told him that she did not have the authority to hear a petition for writ of habeas corpus or deal with bond?
13. Did the Ellis County Texas Clerk of Court violate William M. Windsor's rights when she refused to file his petition writ of habeas corpus?
14. Is the alleged PR Bond of December 19, 2014 invalid as it was not fully executed?
15. Did Ellis County Texas Judge Cindy Ermatinger not have jurisdiction over William M. Windsor on December 30, 2014?
16. Did Ellis County Texas fail to serve William M. Windsor with notice of the December 30, 2014 hearing as required by law?
17. Are any actions taken at the hearing on December 30, 2014 null and void?
18. Has William M. Windsor been illegally restrained in his liberty by the State of Texas?
19. Should the relief requested in the petitions for writ of habeas corpus be granted?

"The issuance of a valid Governor's warrant renders moot any complaint arising from confinement under a fugitive warrant, including detention in excess of the statutory period." *Wall,* 2012 WL 5869595, at *4 (citing *Ex parte Worden,* 502 S.W.2d 803, 805 (Tex. Crim. App. 1973; *Echols v. State,* 810 S.W.2d 430, 431 (Tex. App.—Houston [14th Dist.] 1991, no pet.); *Ex parte Logan,* No. 05–10–01354–CR, 2011 WL 989066, at *2 (Tex. App.—Dallas Mar. 22, 2011, no pet.) (not designated for publication); *Ex parte Steadman,* No. 04–04–00188–CR, 2004 WL 1835959, at *1 (Tex. App.—San Antonio Aug. 18, 2004, no pet.) (mem. op., not designated for publication); and *Ex parte Chavez,* No. 13–03–00692–CR, 2004 WL 1834459, at *1 (Tex. App.—Corpus Christi Aug. 12, 2004, no pet.) (mem. op., not designated for publication)). In this case, it is not disputed that a valid Governor's

warrant was issued. The issuance of the Governor's warrant and Windsor's subsequent extradition from Idaho to Montana render moot all of Windsor's issues[20] other than those relating to the PR bond and the December 30 hearing. *See Wall*, 2012 WL 5869595, at *5 ("we hold that the issuance of the valid Governor's warrant rendered moot Appellant's complaint that he was illegally detained on a fugitive warrant in excess of ninety days without the issuance of the required Governor's warrant").

Issues 14 through 17 pertain to the December 30 hearing and the judgment nisi that forfeited Windsor's $100,000 PR bond. These four issues are presented in connection with Windsor's notice of appeal that was filed on January 15, 2015 with the trial court clerk. That notice of appeal states: "Windsor serves this Notice of Appeal of the orders of this Court at a hearing on December 30, 2015." That notice of appeal was not sent to us by either Windsor or the district clerk; it was only included in the clerk's record. *See* TEX. R. APP. P. 25.1(f) (providing that "trial court clerk must immediately send a copy of the notice of appeal to the appellate court clerk").

The only order entered in connection with the December 30 hearing was the trial court's judgment nisi.[21] The notice of appeal of the judgment nisi should have been

[20] Many of Windsor's issues (Issues 2, 3, 5, 8-9, and 11-13) are either not cognizable (in that they seek declaratory relief) or not preserved in this appeal because they were not raised in his several habeas applications. Accordingly, they are dismissed, and to the extent that any of these issues are cognizable or were preserved, they are dismissed as moot. Furthermore, to the extent that some of Windsor's issues challenge the merits of the Montana charges against him, they are not properly before us. *See Wall*, 2012 WL 5869595, at *4 (noting limited scope of extradition proceedings and that courts can consider only four issues on habeas corpus: "(1) whether the extradition documents on their face are in order; (2) whether appellant has been charged with a crime in the demanding state; (3) whether appellant is the same person named in the extradition request; and (4) whether appellant is a fugitive") (citing *Ex parte Potter*, 21 S.W.3d 290, 294 (Tex. Crim. App. 2000)).

[21] The record does not reflect whether the judgment nisi was docketed in the trial court and a bond forfeiture

docketed as a separate criminal appellate proceeding.[22] *See* TEX. CODE CRIM. PROC. ANN. art. 44.42 (West 2006) ("An appeal may be taken by the defendant from every final judgment rendered upon a personal bond, bail bond or bond taken for the prevention or suppression of offenses, where such judgment is for twenty dollars or more, exclusive of costs, but not otherwise."). Accordingly, the Clerk of the Court is instructed to docket the January 15, 2015 notice of appeal as a new criminal appeal.[23]

Because issues 14 through 17 are not properly before us in this habeas appeal, they are dismissed. Having dismissed or dismissed as moot all of Windsor's issues, we dismiss this appeal.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Dismissed
Opinion delivered and filed January 14, 2016
Do not publish
[CR25]

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proceeding was commenced. *See* TEX. CODE CRIM. PROC. ANN. art. 22.10 (West 2009); s*ee also Giri v. State*, No. 10-10-00280-CR, 2011 WL 1166668, at *1 (Tex. App.—Waco Mar. 30, 2011, no pet.) (mem. op., not designated for publication) (setting forth procedure for bond forfeiture).

[22] Bond-forfeiture appeals are criminal matters but are governed by the procedural rules that govern civil appeals. *See Safety Nat'l Cas. Corp. v. State*, 305 S.W.3d 586, 588 (Tex. Crim. App. 2010); *Int'l Fidelity Ins. Co. v. State*, No. 10-03-00178-CR, 2003 WL 22976423, at *1 (Tex. App.—Waco Dec. 17, 2003, no pet.) (mem. op., not designated for publication).

[23] The judgment nisi is interlocutory and is not a final, appealable judgment. *See* TEX. CODE CRIM. PROC. ANN. art. 44.42 ("appeal may be taken by the defendant from every *final judgment* rendered upon a personal bond") (emphasis added). That issue will be addressed in the separate appellate proceeding that the January 15 notice of appeal will be filed in.


COURT OF APPEALS
STATE OF TEXAS