

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-06-00230-CR**

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**In re Johnny Wayne White, II**

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**FROM THE DISTRICT COURT OF BELL COUNTY, 264TH JUDICIAL DISTRICT  
NO. 47,692, HONORABLE MARTHA J. TRUDO, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

In February 1998, Johnny Wayne White, II was sentenced to twenty years in prison following his conviction for aggravated robbery. On March 13, 2006, White filed a pro se motion for appointment of counsel for the purpose of requesting forensic DNA testing. *See* Tex. Code Crim. Proc. Ann. art. 64.01(c) (West Supp. 2005). On March 24, 2006, the district court signed an “order dismissing DNA testing motion.” White filed a pro se notice of appeal, after which the trial court appointed counsel to represent White on the appeal.

In its order, the trial court found that White failed to identify the evidence to be tested or to submit a supporting affidavit. *See id.* art. 64.01(a), (b). But the motion before the court was not a motion for testing for which the missing items are requisites; it is a request for appointed counsel to prepare and file a motion for testing. The order prematurely dismisses—in effect, denies—a motion for DNA testing that has not yet been filed. The order does not rule on the motion for counsel.

The “order dismissing DNA testing motion” is reversed and the cause is remanded to the district court for further proceedings.

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Jan P. Patterson, Justice

Before Chief Justice Law, Justices Patterson and Pemberton

Reversed and Remanded

Filed: September 20, 2006

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