

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00244-CR

Gregory Michael Klapesky, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF WILLIAMSON COUNTY, 26TH JUDICIAL DISTRICT
NO. 03-1063-K26, HONORABLE BILLY RAY STUBBLEFIELD, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Gregory Michael Klapesky filed a notice of appeal on April 24, 2015, complaining of what he characterized as the trial court’s apparent denial of his motion for appointment of counsel to assist him in seeking post-conviction DNA testing. The State filed a motion to dismiss, arguing that there was no appealable order on file. Appellant has since filed a letter, explaining that counsel has been appointed to assist in the matter and acknowledging that he filed his notice of appeal before any rulings had been made. Because the trial court has not signed any orders that are subject to appeal, we therefore dismiss the appeal for want of jurisdiction.¹

¹ We note that although an order denying DNA testing is an appealable order, an order denying a request for appointed counsel under chapter 64 is not. *Gutierrez v. State*, 307 S.W.3d 318, 321, 323 (Tex. Crim. App. 2010) (appeal from denial of motion for appointed counsel is premature; motion for appointed counsel is “a preliminary matter that precedes the initiation of Chapter 64 proceedings,” and “better course is for a convicted person to file a motion for DNA testing and, if and when the motion is denied, appeal any alleged error made by the trial judge in refusing to appoint counsel”).

See Calton v. State, No. 02-13-00460-CR, 2014 WL 584940, at *1 (Tex. App.—Fort Worth Feb. 13, 2014, no pet.). We dismiss the State’s motion.

David Puryear, Justice

Before Justices Puryear, Goodwin, and Bourland

Dismissed for Want of Jurisdiction

Filed: August 21, 2015

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