

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

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**NO. 03-17-00242-CV**

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**Patrick Heaney, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 403RD JUDICIAL DISTRICT  
NO. D-1-DC-14-205206, HONORABLE BRENDA KENNEDY, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

Appellant Patrick Heaney pleaded guilty to the offense of possession of a controlled substance (methamphetamine) and was sentenced to 10 years' imprisonment. In the judgment of conviction entered on March 6, 2015, the trial court specified that the amount of court costs was \$300.00 and ordered Heaney to pay the court costs in an "order to withdraw funds" that was incorporated into the judgment. *See* Tex. Gov't Code § 501.014 (establishing that Texas Department of Criminal Justice takes possession of inmate's money during confinement and upon notification by court Department shall withdraw any amount inmate is ordered to pay by court and make ordered payment to court or party specified in court order). Heaney appeals pro se from the order to withdraw funds.

Upon review of the trial-court clerk's record, the Clerk of this Court sent Heaney a letter informing him that the Court appears to lack jurisdiction over the appeal because we have no

jurisdiction to hear an appeal from a judgment that is not final, unless there is specific statutory authority permitting an appeal before final judgment. See Tex. Civ. Prac. & Rem. Code §§ 51.012, .014(a). The Clerk requested a response informing us of any basis that exists for jurisdiction. Heaney responded, asserting that he filed a motion for judgment nunc pro tunc related to the withdrawal order and that the trial court never ruled upon it. Heaney previously filed a petition for writ of mandamus challenging the trial court's refusal to rule on that motion and various other pre- and post-judgment motions. See *In re Heaney*, No. 03-16-00491-CV, 2016 WL 4272125, at \*1-2 (Tex. App.—Austin Aug. 9, 2016, orig. proceeding). This Court determined in Heaney's mandamus proceeding that Heaney had not demonstrated that the trial court had jurisdiction, and therefore, a duty, to rule on his various post-conviction motions. *Id.* at \*1. With regard to his motion for judgment nunc pro tunc, we noted that after its general jurisdiction expires, a trial court's jurisdiction is limited to performing other functions specified by statute or rule, such as “correcting clerical errors in a judgment nunc pro tunc.” *Id.* (citing *State v. Bates*, 889 S.W.2d 306, 309 (Tex. Crim. App. 1994) (en banc), for proposition that trial court has authority under appellate rules to issue judgment nunc pro tunc after its plenary power has expired but only to correct clerical errors that are not a product of judicial reasoning or determination). Heaney's motion for judgment nunc pro tunc only asserted that he was entitled to receive credit toward payment of costs adjudged against him under Article 43.09(b) of the Texas Code of Criminal Procedure. Article 43.09(b) provides:

*In its discretion*, the court may order that for each day's confinement served by a defendant under this article, the defendant receive credit toward payment of the pecuniary fine and credit toward payment of costs adjudged against the defendant. Additionally, the court may order that the defendant receive credit under this article for each day's confinement served by the defendant as punishment for the offense.

Tex. Crim. Proc. Code § 43.09(b) (emphasis added). As the Texas Court of Criminal Appeals explained in *Bates*, a judgment nunc pro tunc “may not be used to correct ‘judicial’ errors, i.e., those errors which are a product of judicial reasoning or determination.” 889 S.W.2d at 309. Because a court’s decision to grant or deny credit to a defendant under Article 43.09 is discretionary, it is a product of judicial reasoning, not a clerical error, and thus, not an appropriate matter for a judgment nunc pro tunc. Heaney’s motion for judgment nunc pro tunc did not challenge the trial court’s order to withdraw funds under Government Code Section 501.014. After Heaney filed his response to the Clerk of the Court’s letter, the State filed a motion to dismiss the appeal for want of jurisdiction arguing that we lack jurisdiction over the appeal because the trial court’s March 6, 2015 order to withdraw funds was not a final, appealable order. We agree for the reasons stated below.

Proceedings to recover costs under Section 501.014(e) are civil in nature and are not part of the underlying criminal case. *Id.* at 316. In civil cases, unless specifically authorized by statute, appeals may be taken only from final orders or judgments. Unless a statute authorizes an interlocutory appeal, appellate courts generally only have jurisdiction over final judgments. *CMH Homes v. Perez*, 340 S.W.3d 444, 447 (Tex. 2011); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). An order to withdraw funds is not considered a final, appealable order. *See Goodspeed v. State*, 352 S.W.3d 714, 715 (Tex. App.—Texarkana 2011, pet. denied) (citing *Harrell v. State*, 286 S.W.3d 315, 316 & n.1 (Tex. 2009)).

As the Texas Supreme Court explained in *Harrell*, a withdrawal notification is not an “order” in the traditional sense of a court order, judgment, or decree issued after notice and hearing in either a civil or criminal proceeding. 286 S.W.3d at 316 & n.1. Heaney was party to the

underlying action and was notified of the costs assessed when the convicting court sentenced him. While an inmate who is assessed costs may file a motion to challenge them and may appeal from a trial court's final order denying the motion to modify or rescind the withdrawal, there is no such order in the record before this Court. *See id.* at 320-21 (recognizing inmate's due-process right to contest costs believed to be erroneous or that vary from the amount assessed in the underlying criminal judgment); *Bustos v. State*, 03-16-00117-CR, 2016 WL 3974640, at \*1 (Tex. App.—Austin July 20, 2016, no pet.) (citing, *e.g.*, *Williams v. State*, 332 S.W.3d 694, 698 (Tex. App.—Amarillo 2011, pet. denied)). Accordingly, we dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 43.2(f).

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Cindy Olson Bourland, Justice

Before Justices Puryear, Field, and Bourland

Dismissed for Want of Jurisdiction

Filed: August 30, 2017

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