TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00262-CR

Marianne Geraci, Appellant

v.

The State of Texas, Appellee

FROM THE COUNTY COURT AT LAW NO. 4 OF TRAVIS COUNTY
NO. C-1-CR-16-100023, THE HONORABLE MIKE DENTON, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

Appellant Marianne Geraci was charged by complaint with the traffic offense of speeding. *See* Tex. Transp. Code § 545.351. After a jury trial in the municipal court of record, the jury found appellant guilty and assessed her punishment at a $200 fine. Appellant filed a motion for new trial, which was denied by the municipal court. *See* Tex. Gov't Code § 30.00014(c). Appellant then appealed the municipal court's judgment to the county court at law. *See id.* §§ 30.00014(a), 30.00731; *see also* Tex. Code Crim. Proc. arts. 4.08, 45.042(a). The county court at law issued a written opinion and judgment affirming the judgment of the municipal court. *See* Tex. Gov't Code § 30.00024(a), (c); *see also id.* § 30.00014(b); Tex. Crim. Proc. Code art. 45.042(b). However, upon rehearing, *see* Tex. R. App. P. 49.01, the county court at law reversed the judgment of the municipal court and remanded the case to the municipal court for further proceedings consistent with its opinion, *see* Tex. R. App. P. 43.2(d).

Subsequently, appellant filed a notice of appeal indicating her desire to appeal from the county court at law's order denying her *Motion to Deny Appellee's Brief and to Exclude Special Prosecutor*.

In Texas, appeals in a criminal case are permitted only when they are specifically authorized by statute. *State ex rel. Lykos v. Fine*, 330 S.W.3d 904, 915 (Tex. Crim. App. 2011); *Haile v. State*, 451 S.W.3d 856, 857–58 (Tex. App.—Austin 2014, no pet.); *see Bayless v. State*, 91 S.W.3d 801, 805 (Tex. Crim. App. 2002) ("[A] defendant's right of appeal is a statutorily created right."). The standard for determining whether an appellate court has jurisdiction to hear and determine a case "is not whether the appeal is precluded by law, but whether the appeal is authorized by law." *Blanton v. State*, 369 S.W.3d 894, 902 (Tex. Crim. App. 2012) (quoting *Abbott v. State*, 271 S.W.3d 694, 696–97 (Tex. Crim. App. 2008)); *State ex rel. Lykos*, 330 S.W.3d at 915; *Haile*, 451 S.W.3d at 858.

Appellant pursues her appeal under section 30.00027 of the Government Code, article 44.02 of the Code of Criminal Procedure,[1] and Rule 25.2 of the Texas Rule of Appellate Procedure. We find no authority for appellant to appeal the order at issue under those provisions.

The Government Code grants a defendant convicted in a municipal court of record the right to appeal to the court of appeals if the fine assessed against the defendant exceeds $100 and the appellate court affirms the municipal court's judgment. *See* Tex. Gov't Code § 30.00027(a)(1). Here, the county court at law, acting as the appellate court, reversed the judgment of the municipal

[1] Appellant cites to "Texas Government Code 44.02" in her notice of appeal. As there is no section 44.02 of the Government Code, we assume appellant intended to refer to article 44.02 of the Code of Criminal Procedure, which governs a defendant's right to appeal in a criminal action.

court and set aside appellant's conviction for speeding. Accordingly, no appeal is authorized under the statute.[2] *See, e.g.*, *Schatz v. State*, 471 S.W.3d 928, 929 (Tex. App.—Fort Worth 2015, no pet.) (dismissing appeals because county court did not affirm municipal court's judgment but instead dismissed municipal appeals); *Flores v. State*, 462 S.W.3d 551 (Tex. App.—Houston [1st Dist.] Mar. 5, 2015, no pet.) (dismissing appeals for lack of jurisdiction when county criminal court dismissed appeal of municipal court judgments); *Jamshedji v. State*, 230 S.W.3d 224, 225 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd) (dismissing appeal because right of appeal to court of appeals exists only where conviction in municipal court has been affirmed by county court and judgment was instead dismissed by county court).

Article 44.02 of the Texas Code of Criminal Procedure provides that "[a] defendant in any criminal action has the right of appeal under the rules hereinafter prescribed. . . ." Tex. Code Crim. Proc. art. 44.02. "However, in the absence of a positive legislative enactment, this statutory right of appeal has generally been restricted to persons convicted of offenses and those denied release under the writ of habeas corpus." *Dekneef v. State*, No. 03-13-00699-CR, 2013 WL 6801261, at *2

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[2] The Government Code also authorizes an appeal if "the sole issue is the constitutionality of the statute or ordinance on which a conviction is based." Tex. Gov't Code § 30.00027(a)(2). We take judicial notice of the fact that this Court has previously determined that an appeal by appellant was not authorized under this portion of the statute because the record demonstrates that appellant raised six issues in the county court at law, none of which challenged the constitutionality of the speeding statute. *See Geraci v. State*, No. 03-17-00023-CR, 2017 WL 1315347, at *2 n.1 (Tex. App.—Austin Apr. 6, 2017, no. pet. h.); *see also Volosen v. State*, 227 S.W.3d 77, 81 (Tex. Crim. App. 2007) (noting that appellate court can take judicial notice when matter is appropriately subject to judicial notice and observing that matter of law "would seem to be an especially appropriate subject of judicial notice"); *Fletcher v. State*, 214 S.W.3d 5, 7 (Tex. Crim. App. 2007) (recognizing that "appellate court may take judicial notice of its own records in the same or related proceedings involving same or nearly same parties").

(Tex. App.—Austin Dec. 20, 2013, no pet.) (mem. op., not designated for publication) (quoting *Sanchez v. State*, 340 S.W.3d 848, 849 (Tex. App.—San Antonio 2011, no pet.)) (internal quotes omitted); *see Abbott*, 271 S.W.3d at 697 n.8 (noting Court's prior recognition of "long-established rule that a defendant's general right to appeal under Article 44.02 'has always been limited to appeal' from a 'final judgment.'"); *McIntosh v. State*, 110 S.W.3d 51, 52 (Tex. App.—Waco 2002, no pet.) (defendant has right to appeal from final judgment of conviction or when "expressly granted by law") (internal quotes omitted).

Finally, appellant's reliance on Texas Rule of Appellate Procedure 25.2, which provides that a defendant "has the right of appeal under Code of Criminal Procedure article 44.02 and these rules" in every case in which trial court "enters a judgment of guilt or other appealable order," is misplaced. *See* Tex. R. App. P. 25.2(A)(2). The Rules of Appellate Procedure provide the mechanism for invoking appellate jurisdiction, but do not create jurisdiction. *Keaton v. State*, 294 S.W.3d 870, 872 (Tex. App.—Beaumont 2009, no pet.); *see White v. State*, 61 S.W.3d 424, 427–28 (Tex. Crim. App. 2001) ("The Rules of Appellate Procedure do not establish jurisdiction of courts of appeals, but, rather, set out procedures which must be followed in order to invoke jurisdiction over a particular appeal."). The appellate rules cannot create jurisdiction where none exists. *State v. Riewe*, 13 S.W.3d 408, 413 (Tex. Crim. App. 2000); *Keaton*, 294 S.W.3d at 872.

We find no statutory provision granting appellant the right to appeal the county court at law's order at issue and find no authority to appeal it under the specific provisions upon which appellant relies. Accordingly, we dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 43.2(f).

Melissa Goodwin, Justice

Before Justices Puryear, Pemberton, and Goodwin

Dismissed for Want of Jurisdiction

Filed: May 11, 2017

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