



NUMBER 13-16-00590-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

FRANCISCO ESCOBEDO,

APPELLANT,

v.

THE STATE OF TEXAS,

APPELLEE.

**On appeal from the 148th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Chief Justice Valdez**

Appellant Francisco Escobedo filed a notice of appeal challenging his September 28, 2016 judgment of conviction for aggravated sexual assault of a child. TEX. PEN. CODE ANN. §§ 12.32, 22.021 (West, Westlaw through Ch. 49, 2017 R.S.). On December 12, 2016, the trial court signed an order granting appellant's motion for new trial. Appellant has now filed a motion to stay this appeal pending the resolution of the State's appeal of

the new trial order, *State of Tex. v. Escobedo*, currently pending in our appellate cause 13-16-00684-CR.

The standard for determining appellate jurisdiction in a criminal case is not whether the appeal is precluded by law, but whether the appeal is authorized by law. *Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014); *Abbott v. State*, 271 S.W.3d 694, 696–97 (Tex. Crim. App. 2008); *Rabbani v. State*, 494 S.W.3d 778, 779–80 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd). Article 44.02 of the Texas Code of Criminal Procedure provides a defendant in a criminal case with the right to appeal a final judgment of conviction. See TEX. CODE CRIM. PROC. ANN. art. 44.02 (West, Westlaw through Ch. 49, 2017 R.S.) (stating that “[a] defendant in any criminal action has the right of appeal under the rules hereinafter prescribed....”); TEX. R. APP. P. 25.2(a)(2) (stating that “[a] defendant in a criminal case has the right of appeal under Code of Criminal Procedure article 44.02 and these rules” and that “[t]he trial court shall enter a certification of the defendant's right of appeal each time it enters a judgment of guilt or other appealable order”); *Abbott*, 271 S.W.3d at 697 n.8. The courts of appeals do not have jurisdiction to review interlocutory orders in criminal cases unless that jurisdiction has been expressly granted by law. *Ragston*, 424 S.W.3d at 52; *Rabbani*, 494 S.W.3d at 780.

An order granting a motion for new trial “restores the case to its position before the former trial, including, at any party’s option, arraignment or pretrial proceedings initiated by that party.” TEX. R. APP. P. 21.9(b); see *State v. Bates*, 889 S.W.2d 306, 310 (Tex. Crim. App. 1994) (construing former appellate rules); *Pedraza v. State*, 69 S.W.3d 220, 223 (Tex. App.—Corpus Christi 2001, no pet.); *Waller v. State*, 931 S.W.2d 640, 643–44

(Tex. App.—Dallas 1996, no pet.). In this case, the order granting the motion for new trial was not limited to punishment only. See TEX. R. APP. P. 21.9(c). Thus, there is no judgment of conviction or other appealable order left in the case, and appellant's notice of appeal from the previous judgment of conviction finding of guilt is no longer effective. See TEX. R. APP. P. 27.1(b) (stating that a prematurely filed notice of appeal is not effective if it is filed before the trial court makes a finding of guilt or receives jury verdict). Accordingly, we have no jurisdiction to consider this appeal. See *Wright v. State*, 969 S.W.2d 588, 589 (Tex. App.—Dallas 1998, no pet.); *Waller*, 931 S.W.2d at 643–44.

The Court, having examined and fully considered the documents on file and the trial court's order granting a new trial, is of the opinion that the appeal should be dismissed for want of jurisdiction. Therefore, we DENY appellant's motion to stay this appeal and we DISMISS this appeal FOR WANT OF JURISDICTION.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
10th day of August, 2017.