

NO. 12-10-00267-CR  
NO. 12-10-00268-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*DAVID LANCELOT JENKINS, JR.,  
APPELLANT*

§ *APPEALS FROM THE 402ND*

*V.*

§ *JUDICIAL DISTRICT COURT OF*

*THE STATE OF TEXAS,  
APPELLEE*

§ *WOOD COUNTY, TEXAS*

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*MEMORANDUM OPINION  
PER CURIAM*

Appellant, David Lancelot Jenkins, Jr., attempts to appeal from an order denying his motion for appointment of counsel pursuant to article 64 of the Texas Code of Criminal Procedure.

A convicted person is entitled to appointed counsel if (1) he informs the trial judge that he wishes to submit a motion for forensic DNA testing under chapter 64, (2) the trial judge finds that “reasonable grounds” exist for the filing of the motion, and (3) the trial judge finds that the convicted person is indigent. TEX. CODE CRIM. PROC. ANN. art. 64.01(c) (Vernon Supp. 2010). Except in capital cases in which the death sentence was imposed, an appeal under chapter 64 is to a court of appeals in the same manner as an appeal of any other criminal matter. *Id.* art. 64.05 (Vernon 2006). However, the court of criminal appeals has recently held that an order denying appointed counsel under article 64.01(c) is not an immediately appealable order. *Gutierrez v. State*, 307 S.W.3d 318, 319 (Tex. Crim. App. 2010). Instead, the order is appealable “if and when” the motion for forensic DNA testing is denied. *Id.* at 323.

On August 17, 2010, this court notified Appellant that the information received in these appeals does not include a final judgment or other appealable order and therefore does not show the jurisdiction of this court. *See* TEX. R. APP. P. 37.2. Appellant was further notified that these appeals would be dismissed unless the information was amended on or before September 16, 2010, to show the jurisdiction of this court. *See*

TEX. R. APP. P. 44.3. Appellant responded by furnishing a copy of the order denying his motion for appointed counsel. Because this order is not appealable, Appellant has not shown the jurisdiction of this court. *See id.* Accordingly, these appeals are ***dismissed for want of jurisdiction***. *See* TEX. R. APP. P. 42.3(a).

Opinion delivered September 15, 2010.

*Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.*

(DO NOT PUBLISH)