

NO. 12-16-00098-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

MICHAEL KENNEDY,
APPELLANT

§ ***APPEAL FROM THE 3RD***

V.

§ ***JUDICIAL DISTRICT COURT***

THE STATE OF TEXAS,
APPELLEE

§ ***ANDERSON COUNTY, TEXAS***

MEMORANDUM OPINION
PER CURIAM

Appellant Michael Kennedy attempts to appeal an order denying his motion to recuse the trial court judge. The Honorable Mary Murphy, Presiding Judge of the First Administrative Judicial Region, signed an order denying the motion on March 23, 2016.

Appellant was convicted of theft and sentenced to imprisonment for sixty-two years. *See generally Kennedy v. State*, No. 12-08-00246-CR, 2009 WL 4829989 (Tex. App.–Tyler Dec. 16, 2009, pet. stricken) (mem. op., not designated for publication). This court affirmed Appellant’s conviction but reversed the judgment with respect to the punishment imposed and remanded for a new punishment hearing. *See id.* at *4. On remand, the trial court held a second trial on punishment, and the jury sentenced Appellant to imprisonment for ninety-nine years. *See generally Kennedy v. State*, No. 12-11-00041-CR, 2012 WL 3201924 (Tex. App.–Tyler Aug. 8, 2012, pet. ref’d) (mem. op., not designated for publication). This court affirmed the trial court’s judgment. *Id.* at *8. Appellant filed his motion to recuse in the same trial court case several years after the judgment became final.¹

¹ Subject to certain exceptions not applicable here, Rule 18a prohibits the filing of a motion to recuse “after the tenth day before the date set for trial or other hearing.” TEX. R. CIV. P. 18a(1)(B). The rule makes no provision for filing a motion to recuse after a judgment has become final. *See* TEX. R. CIV. P. 18a.

If a motion to recuse is denied, the order may be reviewed “only for abuse of discretion on appeal from the final judgment.” TEX. R. CIV. P. 18a(j)(1)(A). The information in this appeal does not include a final judgment. And this court is without jurisdiction to consider the denial of a motion to recuse until there is a final judgment. *See, e.g., Smith v. Alton Mgmt.*, No. 05-04-00671-CV, 2004 WL 1490099, at *1 (Tex. App.–Dallas July 6, 2004, no pet.) (per curiam) (mem. op., not designated for publication). Therefore, by letter dated April 4, 2016, the court notified Appellant that the order being appealed is not an appealable order. *See* TEX. R. APP. P. 37.1, 44.3. Appellant was further notified that the appeal would be dismissed unless, on or before May 4, 2016, the information in the appeal was amended to show the jurisdiction of this Court.

In response to this court’s notice, Appellant amended his notice of appeal. However, he did not show the jurisdiction of this court. Accordingly, the appeal is *dismissed for want of jurisdiction*. *See* TEX. R. APP. P. 42.3(a).

Opinion delivered May 11, 2016.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MAY 11, 2016

NO. 12-16-00098-CR

MICHAEL KENNEDY,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 3rd District Court
of Anderson County, Texas (Tr.Ct.No. 29326)

THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this court that this court is without jurisdiction of the appeal, and that the appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this court that this appeal be, and the same is, hereby **dismissed for want of jurisdiction**; and that this decision be certified to the court below for observance.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.