

NO. 12-19-00063-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

RANDALL WAYNE MCNULTY, APPELLANT	§	APPEAL FROM THE 349TH JUDICIAL DISTRICT COURT
V.	§	HOUSTON COUNTY, TEXAS
THE STATE OF TEXAS, APPELLEE	§	

**MEMORANDUM OPINION
PER CURIAM**

This appeal is being dismissed for want of jurisdiction. Randall Wayne McNulty, acting pro se, filed a notice of appeal to complain of the trial court’s failure to issue findings of fact and conclusions of law regarding his motion for DNA testing in trial court cause number 05CR-076.¹ The record contains a June 23, 2017, letter from the Houston County District Clerk informing Appellant that the judge decided not to move forward on his case and there are no new entries on the docket sheet. The record does not contain an order on the motion for DNA testing.

On February 25, 2019, this Court notified Appellant that the information received failed to show the jurisdiction of the Court, i.e., there is no new final judgment or appealable order contained therewith. The notice further advised Appellant that the appeal would be dismissed unless the information was amended on or before March 27, 2019, to show this Court’s jurisdiction. Appellant did not respond to this Court’s notice.

“[I]n Texas, appeals by either the State or the defendant 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). Here, there is no order determining Appellant’s motion for

¹ In March 2007, this Court affirmed Appellant’s conviction in trial court cause number 05CR-076. See *McNulty v. State*, No. 12-06-00019-CR, 2007 WL 805784 (Tex. App.—Tyler Mar. 14, 2007, pet. ref’d) (mem. op., not designated for publication).

DNA testing. Absent such an order, this Court has no jurisdiction over Appellant's appeal. *See Toland v. State*, No. 05-16-01471-CR, 2017 WL 1808433, at *1 (Tex. App.—Dallas May 5, 2017, pet. ref'd) (mem. op., not designated for publication) (no jurisdiction without final order determining motion for DNA testing). Accordingly, we *dismiss* Appellant's appeal for *want of jurisdiction*. *See* TEX. R. APP. P. 43.2(f).

Opinion delivered April 10, 2019.

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(DO NOT PUBLISH)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

APRIL 10, 2019

NO. 12-19-00063-CR

RANDALL WAYNE MCNULTY,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 349th District Court
of Houston County, Texas (Tr.Ct.No. 05CR-076)

THIS CAUSE came on to be heard on the appellate record, and the same being considered, it is the opinion of this Court that it 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.