

**NOS. 12-20-00166-CR  
12-20-00167-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

***SEAN DELANEY RALSTON,  
APPELLANT***

***§ APPEAL FROM THE 114TH***

***V.***

***§ JUDICIAL DISTRICT COURT***

***THE STATE OF TEXAS,  
APPELLEE***

***§ SMITH COUNTY, TEXAS***

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***MEMORANDUM OPINION  
PER CURIAM***

These appeals are being dismissed for want of jurisdiction. Sean Delaney Ralston, acting pro se, filed a notice of appeal to challenge the denial of his post-judgment motion to recuse the trial court judge.<sup>1</sup>

On July 31, 2020, 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 appeals would be dismissed unless the information was amended on or before August 31, to show this Court's jurisdiction. In response, Appellant states he has yet to receive a copy of the order denying his motion to recuse and he has no access to the law library because of testing positive for COVID-19.

“[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); *see Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014). The standard for determining jurisdiction is not whether an appeal is precluded by law

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<sup>1</sup> Appellant was convicted of aggravated sexual assault of a child in 1999 and this Court affirmed his convictions. *See Ralston v. State*, Nos. 12-99-00214-CR, 12-99-00215-CR (Tex. App.—Tyler April 18, 2000, writ denied). The Texas Court of Criminal Appeals denied habeas relief, without written orders. *See Ex parte Ralston*, WR-57,253-03, WR-57,253-04 (Tex. Crim. App. Jan. 12, 2011).

but whether the appeal is authorized by law. *Abbott v. State*, 271 S.W.3d 694, 696–97 (Tex. Crim. App. 2008). This Court is unaware of any statutory authority authorizing an appeal from the denial of a post-judgment motion to recuse a trial judge. *See Gonzalez v. State*, No. 04-15-00531-CR, 2015 WL 6500988, at \*1 (Tex. App.—San Antonio Oct. 28, 2015, no pet.) (mem. op., not designated for publication) (per curiam) (dismissing, for want of jurisdiction, appeal from postjudgment motion to recuse). Accordingly, we *dismiss* Appellant’s appeals for *want of jurisdiction*.<sup>2</sup> *See* TEX. R. APP. P. 43.2(f).

Opinion delivered October 14, 2020.

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

(DO NOT PUBLISH)

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<sup>2</sup> Appellant likewise requests an order of appointment of counsel and an evidentiary hearing. The trial court, not this Court, has authority to appoint counsel. *See* TEX. CODE CRIM. PROC. ANN. art. 1.051(d) (West Supp. 2019); *see also Mack v. State*, No. 11-18-00242-CR, 2018 WL 6218610, at \*1 (Tex. App.—Eastland Nov. 29, 2018, pet. ref’d) (mem. op., not designated for publication) (per curiam). Moreover, this Court has no jurisdiction over complaints that may be raised only by postconviction habeas corpus proceedings brought under Article 11.07. *See* TEX. CODE CRIM. PROC. ANN. arts. 11.05, 11.07 (West 2005).



## COURT OF APPEALS

### TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

#### JUDGMENT

OCTOBER 14, 2020

NO. 12-20-00166-CR

SEAN DELANEY RALSTON,

Appellant

V.

THE STATE OF TEXAS,

Appellee

---

Appeal from the 114th District Court  
of Smith County, Texas (Tr.Ct.No. 241-81667-96)

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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.*



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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.*