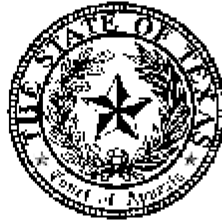
Dismissed and Opinion filed February 8, 2001.



In The

Fourteenth Court of Appeals

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NO. 14-00-01110-CR

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DAVID LLOYD LOWE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 15
Harris County, Texas
Trial Court Cause No. 98-49460

M E M O R A N D U M   O P I N I O N

After a jury trial, appellant was convicted of the offense of criminal trespass. On November 17, 1999, he was sentenced to ninety days in jail and a $1,500.00 fine. On June 20, 2000, appellant filed "Defendant's Motion to Authorized [sic] a Personal or Pretrial Release Bond on Appeal." In that motion, appellant asked the trial court, pursuant to article 44.04(a) of the Texas Code of Criminal Procedure, to reduce the bond pending appeal previously set by the trial court.

The trial court held a hearing on appellant's motion. At the beginning of the hearing, the trial court stated:

> It's the Order of this Court then, that you be released from this case on a personal bond on this criminal trespass case, pending the outcome of your appeal; however, there will be a $500 personal bond. The amount doesn't really matter, but there are certain conditions attached to that bond. Do you understand?
>
> You're released from the jail on this particular case, but there are certain conditions attached to that bond. If you violate those conditions of bond, you're subject to being put back in the county jail. Do you understand?

Appellant stated that he understood. As the hearing continued, the trial court apprized appellant of the conditions of his bond. One of those conditions was that he not consume any type of alcohol or illegal drugs. After being told of this condition, appellant responded that he did not "think" he could abide by the conditions relating to alcohol and drugs. Specifically, he stated: "Well, those would be a problem. You know, what am I going to do on Friday night, Saturday night?" The trial court then asked, "So you're telling me you can't live by the conditions of this bond?" Appellant responded, "That's true. I cannot. I don't see why I should have to, it's ridiculous. When I'm free, I want to be free."[1]

After this exchange, the trial court concluded by stating that it had the right to set conditions of bond and that it had done so. The court then asked if there was anything else, appellant said "no," and the trial court said it would "take a recess." The trial court never resumed the hearing. It is impossible to determine from the hearing record what ruling, if any, the trial court ultimately issued.

The trial court never signed an order denying or granting appellant's request for a lower bond. Accordingly, when this Court reviewed the appellate record and found no signed order, we sent the parties a letter stating that we would consider dismissal of the appeal for want of jurisdiction unless any party filed a response showing meritorious grounds for continuing the appeal.

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[1] Appellant's reference to freedom was based on the fact that he had completed his sentence. However, because his appeal is still pending and he declined to dismiss his appeal, the trial court determined he is still subject to the court's jurisdiction and any conditions of bond the trial court may determine are appropriate.

On January 12, 2001, appellant filed a motion to retain. In his motion, appellant contends a signed, written order is unnecessary to review a trial court's order regarding appellate bond under article 44.04(g). Additionally, appellant claims that under rule 31.3 of the rules of appellate procedure, this court may review any judgment or order regarding appeal bonds without a written order. In response to appellant's motion to retain, the State filed a motion to dismiss, agreeing that this Court is without jurisdiction to review appellant's complaints when the record was devoid of a signed, written order entered by the trial court.

To perfect an appeal in criminal cases when no motion for new trial is filed, a notice of appeal must be filed within thirty days after the day sentence is imposed, or after the day the trial court *enters* an appealable order. TEX. R. APP. P. 26.2(1) (emphasis added). Texas courts have held that "entered" by the court means a signed, written order. *See, e.g., State ex rel. Sutton v. Bage*, 822 S.W.2d 55, 56 (Tex. Crim. App. 1992); *State v. Rollins*, 4 S.W.3d 453, 454 (Tex. App.–Austin 1999, no pet.).[2] In this case, there is no signed, written order in the record from which appellant may perfect an appeal on the issue of bond.[3]

While an appellant certainly has the right to appeal a trial court's decision regarding a request for bond or a decreas in bond pending appeal, *see* TEX. CODE CRIM. PROC. ANN. art. 44.04(g) (Vernon Supp. 2000), this does not mean jurisdiction is conferred on this Court in the absence of a signed, written order. We find appellant's position without merit and agree with the State that a signed, written order is a prerequisite to review by this Court on matters of appeal bonds.

Accordingly, we dismiss the appeal for want of jurisdiction.

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[2] Though these cases involved appeals by the State, it necessarily follows that the phrase has the same meaning when applied to appeals by defendants. Rule 26.2 of the Texas Rules of Appellate Procedure requires an order to be entered by the trial court before an appeal may be perfected. *See* TEX. R. APP. P. 26.2. This requirement applies equally to appeals by defendants and appeals by the State. *Compare* TEX. R. APP. P. 26.2(a) (defendant's appeals) *with* TEX. R. APP. P. 26.2(b) (State's appeals). Thus, if "entered" means a written order in State's appeal, it follows that a written order is required to perfect an appeal by a defendant.

[3] Moreover, even if an oral pronouncement were sufficient, there is no clear ruling on the record in this case.

PER CURIAM

Judgment rendered and Opinion filed February 8, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

Do Not Publish - TEX. R. APP. P. 47.3(b).