

Dismissed and Opinion filed April 27, 2000.



In The

**Fourteenth Court of Appeals**

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**NO. 14-99-00548-CR**

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**TERRY TYRONE WILSON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 180<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 800,944**

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**OPINION**

After entering a guilty plea, the trial court found appellant, Terry Tyrone Wilson, guilty of possession of cocaine with intent to deliver. Pursuant to an agreed recommendation, the trial court assessed punishment at twenty-five years confinement in the Texas Department of Criminal Justice - Institutional Division. In four points of error, appellant challenges the constitutionality of article 1.15 of the Texas Code of Criminal Procedure, claiming that his rights to compulsory process were violated. Because we determine

that we do not have jurisdiction, we dismiss this appeal.<sup>1</sup>

When a defendant pleads guilty pursuant to article 1.15 of the Texas Code of Criminal Procedure and agrees to the punishment recommended by the prosecutor, his ability to appeal his conviction is restricted. *See* TEX. R. APP. P. 25.2(b)(3). Under Rule 25.2(b)(3), the notice of appeal must specify that the appeal is for a jurisdictional defect, error raised by written motion and ruled on before trial, or state that the trial court granted permission to appeal.<sup>2</sup> *See id.*; *Young v. State*, 8 S.W.3d 656, 667 (Tex. Crim. App. 2000). In his appellate brief, appellant asserts that the constitutionality of article 1.15 is the jurisdictional issue he is appealing.

Jurisdiction is the power of the court over the subject matter of the case, conveyed by statute or constitutional provision, coupled with personal jurisdiction over the accused, which is invoked in felony prosecutions by the filing of an indictment. *See* TEX. CONST. art. V, § 12; *Fairfield v. State*, 610 S.W.2d 771, 779 (Tex. Crim. App. [Panel Op.] 1981). Once a trial court's jurisdiction over the subject matter and the parties is properly invoked, a trial court's actions may be erroneous, but they are not void in the jurisdictional sense. *See Martinez v. State*, 5 S.W.3d 722, 725-26 (Tex. App.—San Antonio 1999, no pet.) (citing *Garcia v. Dial*, 596 S.W.2d 524, 527-28 (Tex. Crim. App. [Panel Op.] 1980) (orig. proceeding)).

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<sup>1</sup> If the jurisdiction of the appeals court is not properly invoked, the court can take no action other than to dismiss the appeal. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998).

<sup>2</sup> Appellant filed a general notice of appeal. The State maintains a general notice of appeal is insufficient to confer jurisdiction on this court under Rule 25.2(b)(3) of the Rules of Appellate Procedure to consider jurisdictional defects. Neither this court nor the Court of Criminal Appeals has addressed this specific issue. Further, we note that the courts of appeals have reached conflicting results on this issue. *Compare Martinez v. State*, 5 S.W.3d 722, 725 (Tex. App.—San Antonio 1999, no pet.) (holding a general notice of appeal does not fail to invoke appellate court's jurisdiction to consider a claim of jurisdictional defect), *with Hernandez v. State*, 986 S.W.2d 817, 819 (Tex. App.—Austin 1999, pet. ref'd.) (noting that under Rule 25.2(b)(3) the notice of appeal must specify that the substance of the appeal is for a jurisdictional defect) *and Bruce v. State*, 8 S.W.3d 700, 701 (Tex. App.—Fort Worth 1999, no pet.) (finding that general notice of appeal fails to invoke court's jurisdiction pursuant to plain language of Rule 25.2(b)(3)). In any event, because we have concluded that we are without jurisdiction to consider this appeal, we need not reach this issue.

Constitutional challenges to a statute may affect the court's jurisdiction if the statute affects the power of the court over the subject matter of the case or over the personal jurisdiction of the accused. *See generally, Webb v. State*, 899 S.W.2d 814, 818 (Tex. App.—Waco 1995, pet. ref'd.). For example, challenges to the specific statute a defendant is charged with violating or which defines the punishment he will face, a challenge to the constitutionality of the statute providing the authority of the tribunal before which he appeared or setting forth the practices and procedures relating to the indictment, raise jurisdictional issues. *See id.* Here, while appellant attempts to attack the constitutionality of article 1.15, it is not a statute which affects subject matter or personal jurisdiction. Thus, a constitutional challenge to article 1.15 cannot be classified as jurisdictional.

Because appellant's constitutional challenge to article 1.15 does not raise a jurisdictional defect, this court is without jurisdiction to address his points of error. We therefore dismiss appellant's appeal

/s/ Leslie Brock Yates  
Justice

Judgment rendered and Opinion filed April 27, 2000.

Panel consists of Justices Yates, Fowler and Edelman.

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