TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-02-00452-CR

In re Michael Earl Cruthird Sr.

FROM THE DISTRICT COURT OF BELL COUNTY, 27TH JUDICIAL DISTRICT
NO. 47,106, HONORABLE MARTHA J. TRUDO, JUDGE PRESIDING

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

This is a post-conviction DNA testing proceeding. Tex. Code Crim. Proc. Ann. arts. 64.01-.05 (West Supp. 2003). Appellant, who was convicted of capital murder, has filed a motion to abate the appeal pointing out that it should have been filed in the Texas Court of Criminal Appeals. *Id*. art. 64.05 (in Acapital case,@ appeal is to court of criminal appeals). We agree, but believe that the proper remedy is to dismiss this appeal. Therefore, we dismiss the motion to abate, dismiss this appeal, and instruct the Clerk to deliver the record to the clerk of the court of criminal appeals.

David Puryear, Justice

Before Chief Justice Law, Justices B. A. Smith and Puryear

Dismissed for Want of Jurisdiction

Filed: February 6, 2003

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