Opinion filed July 7, 2011

In The

Eleventh Court of Appeals

No. 11-11-00104-CR

JEFFREY SHARP, Appellant

V.

STATE OF TEXAS, Appellee

On Appeal from the 33rd District Court

Burnet County, Texas

Trial Court Cause No. 37328

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

Jeffrey Sharp[1] filed a notice of appeal in the Third Court of Appeals on March 14, 2011, indicating a desire to appeal his "conviction" in trial court cause no. 37328. The clerk's record, which has recently been received in this court, indicates that there is no judgment of conviction in cause no. 37328 but that this cause related only to a pre-indictment application for writ of habeas corpus seeking bail. Appellant filed the application on February 18, 2010, and the trial court heard the matter on March 24, 2010. We dismiss the appeal.

[1]We note that, in the notice of appeal and the other documents filed by appellant's attorney, appellant's first name is spelled "Jeffery." However, in the document prepared by the district clerk, in appellant's signature, and also in the indictment and judgment in the companion case (our cause no. 11-11-00107-CR), the spelling is "Jeffrey."

Prior to the filing of the notice of appeal in this cause, appellant was indicted, tried, and convicted of the underlying offense under a different cause number: trial court cause no. 38,147, which is cause no. 11-11-00107-CR in our court. Because appellant has already been convicted of the underlying offense and is no longer subject to pretrial confinement, appellant's appeal relating to the pretrial application for writ of habeas corpus is moot. *Martinez v. State*, 826 S.W.2d 620 (Tex. Crim. App. 1992).

Appellant's motion to retain appeal and his motion for extension of time to file the notice of appeal are overruled, and this appeal is dismissed as moot.

PER CURIAM

July 7, 2011

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel[2] consists of: Wright, C.J.,
McCall, J., and Hill, J.[3]

[2]Rick Strange, Justice, resigned effective April 17, 2011. The justice position is vacant pending appointment of a successor by the governor.

[3]John G. Hill, Former Justice, Court of Appeals, 2nd District of Texas at Fort Worth, sitting by assignment.