AP-77,061

RECEIVED IN
COURT OF CRIMINAL APPEALS
OCT 05 2015
Abel Acosta, Clerk

Notice: that the certificate of appellants right of appeal has been sought.

Municipal Court Docket No. E0004327

County Docket No. WRIT 1001

In The County Court At Law No. 2

Honorable Judge: A. Gene Calvert, Jr. Judge Presiding

The State Of Texas

Plaintiff,

v.

Frederick-William: Van Horn,

Defendant

Appeal to the
Court Of Criminal Appeals of Texas
P.O. Box 12308
Austin Texas 78711
Ph: 512 463 1551

Relater: Private Litigant:
Frederick-William: Van Horn
2334 S. Hwy. 77,
Waxahachie, Texas 75165
Phone No. 972 937 6059

Respondent Attorney: DANA D. HUFFMAN
T.B.N. 00792593
401 South Rogers
Waxahachie Texas 75168
Phone No. 972 713 7757

2015 OCT -1 AM 10:52
FILED FOR RECORD
CINDY POLLEY
ELLIS COUNTY CLERK

Docket No. WRIT 1001.
Re: Cause No: E0004327

STATE OF TEXAS:	§	IN THE ELLIS COUNTY
	§	
PLAINTIFF	§	COURT AT LAW No. 2
	§	
vs.	§	109 SOUTH JACKSON St.
	§	
Frederick-William: Van Horn	§	WAXAHACHIE, TEXAS
	§	
Appellant	§	75165

Motion for Certification of defendants right of appeal.

I am Motioning the County Court At Law No. 2 for certification of the defendants right of appeal.

As noticed on the 25th of September, I am Appealing the September 9th order of Ellis county court at law No. 2.

A petition for writ of prohibition principally: a challenge to the subject matter jurisdiction being denied on the 9th is the grounds for this appeal.

This is supposed to be an accelerated appeal.

Texas Rules of Appellate Procedure: TRAP 25.2 Criminal Cases (a) Rights to appeal (2) Of the Defendant. A defendant in a criminal case has the right of appeal under Code of Criminal Procedure article 44.02 & these rules. The trial court shall enter a certification of the defendants right of appeal each time it inters a judgment .... Or other appealable order,.... such as the order I am appealing of this court on the 9th of September

Code of Criminal Procedure article 44.02 Defendant May Appeal: A defendant in any criminal action has the right of appeal under these rules here in after prescribed.

I have filed sufficient notice of the fact I am appealing & that I have agreed to pay for the clerks record & that I have specified the portion of the record I

FILED OCT 01 2015

want. & I have paid the docketing fee to the court of criminal appeals.

I still have not heard from the clerk as to how much.

Civil Practice & Remedies Code Chapter 51. Appeals CPRC §51.014. Appeal from interlocutory order

(a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that: (8) Grants or denies a plea to the jurisdiction.....

You cannot deny me equal opportunity under the law. This prosecution against me is in fact a exercise of feudal law long since bared by our constitutions & laws There is nothing criminal except the name of litigation against me yet it is still pursued & criminality in the fact that it is being continued against me even after the fact of multiple notices of fraud. The principle intent of the law is being denied me. I should not have had to go through this in the first place. It is howbeit apparent that the legislature provides that my appeal may be dismissed if I should fail to obtain a certification of the defendants right of appeal thus I am asking for one before the court of criminal appeals notes that it has not received it yet. See: Texas Rules of Appellate Procedure: TRAP 25.2 (d)

If for some reason you disagree with my correlation of these statutory provisions provided to establish my right to appeal then consider that I am appealing a denial of a plea to the jurisdiction & denial of a plea to the jurisdiction is appealable. & the that statutory provisions are only a guide, & not absolute & cannot possibly account for every situation & that justice is the goal of the principles of law, & the law is not served by ignoring it. Justice means to make it right. How then is it right to continue this prosecution & or deny my appeal when this pursuit of this criminal prosecution is not a matter of the states right or the right of any one under color of her law to pursue in the first place .

I almost did not make the rent, all because if I don't act, you guys treat it as a waiver of my right to act & thus an acceptance obviously contrary to my clear intent of the principles of law, or you act contrary to the only proper application of

the laws & that is out of context with the principle intent of the laws. You should certify my right to appeal if you are not going to grant me relief from this criminal action.

Appeal can be taken from refusal to dismiss for lack of jurisdiction

TEXAS RULES CIVIL TRIALS: COMMENTARIES: Ch. 3. Defendant's Response & Pleadings F. Plea to the Jurisdiction---Challenging the Court

§1.2 Purpose. A plea to the jurisdiction is a procedural device used to challenge the court's subject-matter jurisdiction over a claim. *Texas Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 232 (Tex.2004); *Bland ISD v. Blue*, 34 S.W.3d 547, 554 (Tex.2000); *see Heckman v. Williamson Cty.*, 369 S.W.3d 137, 147 (Tex.2012). Without subject-matter jurisdiction, a court does not have authority to render judgment & must dismiss the claim without resolving the parties' substantive argument. *See City of Houston v. Rhule*, 417 S.W.3d 440, 442-43 (Tex.2013); *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299,304 (Tex.2008); *Bland ISD*, 34 S.W.3d at 553-54. Thus the defendant can use a plea to the jurisdiction to defeat a cause of action without regard to its merits. *Mission Consol. ISD v. Garcia*, 372 S.W.3d 629, 635 (Tex.2012); *Bland ISD*, 34 S.W.3d at 554.

§2. PLEA TO THE JURISDICTION

§2.1 Form. A plea to the jurisdiction may be included in the answer or filed as a separate motion. TRCP 85. If filed as a motion, it should be captioned as a motion to dismiss for lack of jurisdiction.

NOTE

Subject-matter jurisdiction can also be challenged in another procedural instrument, such as a traditional motion for summary judgment. State v.Lueck, 290 S.W. 3d 876, 884 (Tex.2009); Bland ISD v. Blue, 34 S.W.3d 547, 554 (Tex.2000); see also TDCJ v. Simons, 140 S.W.3d 338, 349 (Tex.2004)

(interlocutory appeal under CPRC §51.014(a) (8) can be taken from refusal to dismiss for lack of jurisdiction whether jurisdictional argument is make in plea to the jurisdiction or some other instrument).

§2.4 No deadline. There is no deadline for the plea to the jurisdiction. Lack of subject-matter jurisdiction is fundamental error & can be raised at any time. *Sivley v. Sivley*, 972 S.W.2d 850, 855 (Tex.App.---Tyler 1998, no pet.).

§3.2 No Standing. A plea to the jurisdiction is proper to challenge a party's lack of standing. *See M.D. Anderson Cancer Ctr. V. Novak*, 52 S.W.3d 704,710-11 (Tex.2001),

Issues: should file notice of appeal instead of asking for permission.

COMMENTARIES Ch. 3. Motions of Appeal P. Motion for Interlocutory Appeal & Stay Pending Appeal

§2. INTERLOCUTORY APPEALS

For an interlocutory order to be appealable, a statute or rule must specifically authorize the appeal. *See Ware v. Miller*, 82 S.W.3d 795, 799 (Tex.App.---Amarillo 2002, pet. denied). When a statute or rule authorizes an appeal, parties do not need to file a motion to appeal an interlocutory order. Instead, they should file a notice of appeal & proceed with an accelerated appeal under the TRAPs. *See* TRAP 28.1(a).

Summary of the challenge to the subject matter jurisdiction

The state has no standing to prosecute me in the first place, no grounds, & none of any other kind of right to prosecute me, I am not liable or subject to their interests.

Elements the state is missing: elements paramount to prosecution that they don't have: where is their damaged party? How was I not exercising my rights? & in exercising my rights how do they have any complaints at all? Where is the explicit waver of my rights? How have I given the state or those under color of its law just cause to prosecute me? Where is the state' answer? How can they prove

what really matters?? e.g. My liability to such charges in the light of all the law I have plead to the contrary of the charges? Isn't the evidence supposed to at least have a possible point of being even relevant to some liability at all? If not! what judgment do you have jurisdiction to render in their favor? The only possible answer is none! I am not guilty of anything except exercising my constitutionally secured & guaranteed rights.

I understand a Plea to the Jurisdiction is appropriate when the judgment sought by the prosecution is not within the courts jurisdiction to grant, such as in this case.

The fact of this matter is I challenge to the jurisdiction. It should have been granted without any delay. I should have had justice at my very first response.

Conclusion

Neither the state or Waxahachie has a case against me. I am entitled to the relief sought, & to per sue my damages in a separate action..

Relief Sought

Please terminate the criminal action for lack of jurisdiction. & or grant defendant a certification of the defendants right of appeal.

Further Law & Contentions

(a) "Once jurisdiction is challenged, it must be proven." Hagens v. Lavine, 415 U.S. 533 Note 3.

(b) "The law provides that once State & Federal jurisdiction has been challenged, it must be proven." Main v. Thiboutot, 100 S. Ct. 2502 (1980).

(c) "Jurisdiction can be challenged at anytime, even on final determination." Basso v. Utah Power & Light Co., 495 F 2nd 906 at 910.

(d) "Where there is absence of proof of jurisdiction, all administrative & judicial proceedings are a nullity, & confer no right, offer no protection, & afford

no justification, & may be rejected upon direct collateral attack. §§Thompson v. Tolmie, 2 Pet. 157, 7L. Ed. 381; Griffith v. Frazier; 8 Cr. 9. 3 S. Ed. 471.

Code of Criminal Procedure Chapter 3. Art. 3.02. Criminal Action.

A criminal action is prosecuted in the name of the State of Texas against the accused, & is conducted by some person acting under the authority of the State, in accordance with its laws.

History of CCP art. 3.02: Acts 1965, 59th Leg., vol. 2, ch. 722.

ANNOTATIONS

Burks v. State, 795 S.W.2d 913, 915 (Tex.App.Amarillo 1990, pet. Ref'd). "A crime constitutes an offense against the sovereign. For that reason, a criminal action is pursued under the authority & in the name of the State."

Fairfield v. State, 610 S.W.2d 771, 779 (Tex.Crim.App.1981). "'[J]urisdiction' is comprised not of the 'place' of the prosecution, but of the case, conveyed by statute or constitutional provision, coupled with 'personal' jurisdiction over the accused,

Being familiar with the intent of the principles of our founding law & the nature of our Paramount: Inviolable, Inalienable, Rights, the only assumption evidentially possible regarding Art. 3. 02 in order for it not to conflict & thus be unconstitutional is for the term sovereign to mean & or connote no more than possessing the same right as any one under the laws as apposed to a kings feudal right. Thus the only possible literal association possible to describe the nature of such parties' as described in Art. 3. 02. Is one of a person with a right of restoration or e.g. rem right a right to be made whole, which means you have to have a damage I caused. So if you are not a damaged party e.g. I have not damaged you. Literally you have no right to have me make you whole. The only other possibility is that you want my consent, you want a contract of some form with me for my eternal liability to owe you a debt our for fathers secured us from as seen in such verbatim as the bar of involuntary servitude without just cause. I

emphatically do not consent to being liable as charged!!!

No evidence obtained by an officer or other person in violation of the Constitution or law of the State of Texas, or of the Constitution or law of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case. & we know those officers testimony or my plead facts are not evidence rising to the level appropriate to convict me on. So what is the point of torturing me.

No state may convert a right into a privilege & require a license or fee for the exercise of that right! See Murdock v. Pennsylvania, 319 US. 105.

If a STATE does erroneously require a license or fee for exercise of that right, the citizen may ignore the license & or fee & exercise the right with total impunity! See Shuttles Worth v. Birmingham 373 US. 262.

You cannot be punished for the exercise of a constitutional right! See Miller v. United States 230 F 2nd 486.

You have a perfect defense to the element of willfulness if you rely on the advice of counsel or upon a decision of the United States Supreme Court as a defense. See U.S. v. Bishop, 412 U.S. 346.

The constitution is required to be interpreted in favor of you "the citizen" beneficiary for the protection of your rights & property. See Brars v. United States 273 U.S. 28 & 16th AM Juris Prudence 2nd Constitution Section # 97.

The U.S. Supreme Court has held that it is a violation of due process clause of the 14th Amendment to shift the burden of proof in a criminal case to the Petitioner. See Lowry v. State 692 S.W. 2d 86. 87 Tex Crim App 1985.

It is reversible error for the trial court, over the objection of the state to fail to charge upon the presumption of innocence. See Garcia v. State 634 S.W. 2d 888, 893 (Tex App. San Antonio 1982, no pet.).

The Texas Court of Criminal Appeals: " This court has held that there is no such license known to Texas Law as a driver license": Frank John Gallos v. State, 167 Tex. Crim. 375, 320 S.W. 2d 360.

The Texas Court of Criminal Appeals: An information charging the driver of a motor vehicle upon a public highway without a drivers license charges no offense as there is no such drivers license known to the law: Keith Brooks v. State.

The "RIGHT" to travel is part of the liberty of which the citizen cannot be deprived without due process of the law under the Amendment. See: Kent v. Dulles, 357 US 116. 125 U.S. Supreme Court.

In Hassell v. State 149 Tex. Crim 333, 194 S.W. 2d 400, an information alleging that the Petitioner operated a motor vehicle upon a public highway without a drivers license was insufficient to charge an offense since a drives license is not known to the law.

Relief Sought

Please terminate the criminal action for lack of jurisdiction, to grant the judgments sought in the name of the state, by the Waxahachie municipality . & or provide defendant a certification of the defendants right of appeal.

I am entitled to the damages previously plead & the relief sought, & or to per sue my damages in a separate action..

As an interested party, Non-attorney, Witness, Man & Living Spirit Expressly Reserving All Liberties.

Prepared & submitted on or about the 1st day of October 2015, by Petitioner:

Frederick-William: Van Horn
2334 S. Hwy. 77
Waxahachie, Texas 75165
Ph. No. 972 937 6059

Docket No. WRIT 1001.
Re: Cause No: E0004327

STATE OF TEXAS:	§	IN THE ELLIS COUNTY
	§	
PLAINTIFF	§	COURT AT LAW No. 2
	§	
vs.	§	109 SOUTH JACKSON St.
	§	
Frederick-William: Van Horn	§	WAXAHACHIE, TEXAS
	§	
Appellant	§	75165

Motion to the Ellis County Clerks.

This is regarding my accelerated appeal of the September 9th order.

I am Motioning the County Court At Law No. 2 for certification of the defendants right of appeal.

Please put said motion before him at the earliest possible convenience.

As an interested party, Non-attorney, Witness, Man & Living Spirit Expressly Reserving All Liberties.

Prepared & submitted on or about the 1st, day of October 2015, by Petitioner:

Frederick-William: Van Horn

Frederick-William: Van Horn
2334 S. Hwy. 77
Waxahachie, Texas 75165
Ph. No. 972 937 6059

Docket No. WRIT 1001
. Re: Cause No: E0004327

STATE OF TEXAS:	§	IN THE ELLIS COUNTY
	§	
PLAINTIFF	§	COURT AT LAW No. 2
	§	
vs.	§	109 SOUTH JACKSON St.
	§	
Frederick-William: Van Horn	§	WAXAHACHIE, TEXAS
	§	
Appellant	§	75165

CERTIFICATION OF SERVICE

1. I Relater Frederick-William: Van Horn, hereinafter referred to as Affiant, being of majority in age, competent to testify, as self realized entity, free man upon the land, my yes be yes, my no be no, do state that the truths & facts herein are of first hand personal knowledge, true, correct, complete, certain, not misleading, under penalty of perjury, & in accordance with Title 28 USC 1746 & applicable laws of the State of Texas so help me YHVH, &:

2. That, Affiant on or about October 1st, 2015, produced the attached: I am Motioning the County Court At Law No. 2 for certification of the defendants right of appeal. to be filed/served in regards to, Doc. No. E0004327 regarding said cause this day in the Ellis County Court at Law No. 2 Clerks Office, Waxahachie, Texas 75165, &:

3. That, Affiant on or about this October 1st, 2015, Affiant served the attached, "Affiant' above listed document, etc.", with attachments thereto, hereinafter documents, by filling them also in or by placing said documents properly enclosed in a sealed wrapper, postage prepaid, at the Waxahachie, or other, Texas U.S. Post Offices, listed below:

The Current filing entails Appellant' I am Motioning the County Court At Law

No. 2 for certification of the defendants right of appeal.

1. Court Of Criminal Appeals
P.O. Box 12308
Austin Texas 78711
Ph: 512 463 1551

2. County Court At Law No. 2
Ellis County Clerks Office at
109 South Jackson St.
Waxahachie, Texas 75165

4. Waxahachie Municipal Court
401 S. Rogers,
Waxahachie, Texas 75165

Further Affiant saith naught.

As an interested party, Non-attorney, Witness, Man & Living Spirit Expressly Reserving All Liberties.
Prepared & submitted on or about the 1st day of October 2015, by Affiant:

Frederick-William: Van Horn
2334 S. Hwy. 77
Waxahachie, Texas 75165
Ph. No. 972 937 6059