

APPELLATE STUFF

NO DIRECT APPEAL (INTERLOCUTORY) FOR BOND DENIAL—FILE A WRIT!!

Ragston v. State, No. PD-0824-13, Publish, 2/5/14, Womack. Publish. Courts of appeals do not have jurisdiction to consider an interlocutory appeal of a pretrial motion for BRED. “There is no constitutional or statutory authority granting the courts of appeals jurisdiction to hear interlocutory appeals regarding excessive bail or the denial of bail.” This decision resolves a split of authority amongst the lower courts.

DNA

APPELLATE STUFF: LAW OF THE CASE

State v. Swearingen, No. AP-77,020, Womack, Publish, 2/5/14. TCT grant of motion test DNA evidence over turned on a death case. “Appellee has not established that biological evidence exists or that, where it does exculpatory test results would have affected his trial.” The appellee had filed several prior motions. The law of the case is implicated although the DNA statute changed—not enough to give him relief. The Law of the Case: when the facts and legal issues are virtually identical, they should be controlled by an appellate court’s previous resolution.^[1] This is a court-made doctrine designed to promote judicial consistency and efficiency. Article 64^[2] has changed in that (1) biological material is now defined and (2) the legislature eliminated a requirement that the lack of previous testing had not been the convicted person’s fault. A mere assertion or a general claim that existence of biological material is probable will fail to satisfy that burden—must prove that biological material exists on the item to be retested. (In this case stuff like cigarette butts and panty hose). Fingernail scrapings are now defined as biological material per se under the statute but, “We are not persuaded that results showing the presence of another DNA donor in the fingernail scrapings would overcome the ‘mountain of evidence’ of appellee’s guilt besides jury was already aware that another man’s dna was under her fingernails at the JT and it did not make any difference to them. Rejects the argument that, “because the legislature’s amendment requires DNA results to be run through CODIS (Combined DNA index system), we should now construe an “exculpatory result” to mean DNA results that are not from the convicted person and which generate a CODIS hit. . . . The statute only requires that the results be run through CODIS. It does not set a standard for exculpatory results.“

APPELLATE STUFF

MAILBOX RULE AS APPLIED TO PRO SE INCARCERATED INMATES

Taylor v. State, NO. PD-0180-13, Publish , 2/5/14, Alcala, Keller dissent. Although appellant apparently sent his notice of appeal to the court of appeals instead of the clerk of the convicting court, the plain language of the TRAP required the clerk of the court of appeals to date stamp and immediately forward appellant’s notice of appeal to the trial-court clerk. Imperfections in the address on an envelope containing a notice of appeal do not automatically render the mailbox rule inapplicable.^[3] Makes the inference^[4] that the envelope was properly addressed by the

^[1] *Ware v. State*, 736 S. W. 2d 700, 701 (Tex. Crim. App. 1987).

^[2] TEX. CODE CRIM. PROC. Chapter 64. Motion for Forensic DNA testing.

^[3] *Moore v. State*, 840 S. W. 2d 439, 440-441 (Tex. Crim. App. 1992).

inmate to the appellate court because they got it and it is not the inmate's fault that somehow, somehow the envelope the notice of appeal arrived in got lost. "[A]ppellant, who was incarcerated at the time he filed his notice of appeal, had limited control over his circumstances surrounding the filing of that document and should not be penalized for his inability to provide affirmative evidence, beyond his sworn declaration, to demonstrate that he timely filed his notice of appeal."^[5] Appellant's right to appeal should not depend upon tracking through a trial of technicalities. *Few v. State*, 230 S. W. 3d 184, 190 (Tex. Crim. App. 2007). Though imperfectly addressed, appellant's notice of appeal arrived in the proper court within the window of time allowed under the mailbox rule, thereby invoking the jurisdiction of the court of appeals. TRAP 9.2 sets forth the "mail box" rule and provides that a document is timely filed if received within ten days of the deadline and was mailed before the deadline. In the case of an inmate mailed means given to the prison to mail.

^[4] *Which spurs an energetic and spirited dissent.*

^[5] *Houston v. Lack*, 487 U. S. 266,271, 275 (1988).