

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

State v. Palmer

Palmer · No. 02-14-00175-CR · Decided July 17, 2015

SUMMARY

This document is the State of Texas’s Petition for Discretionary Review in State v. Palmer, arising from the dismissal of the State’s appeal from an order granting a suppression motion. The State argues that a timely notice of appeal signed by an assistant district attorney was authorized by the elected district attorney and therefore invoked appellate jurisdiction, notwithstanding the later-filed affidavit memorializing that authorization. It asks the Texas Court of Criminal Appeals to grant review and reverse the court of appeals’ dismissal.

CASE DETAILS

COURT	Court of Appeals of Texas, Second District, Fort Worth
WRITING FOR THE COURT	Anne Gardner; Livingston, C.J.; Anne Gardner, J.; Walker, J.
JURISDICTION	Texas
DECIDED	July 17, 2015
DOCKET	02-14-00175-CR
DISPOSITION	dismissed
PROCEDURAL POSTURE	The State appealed the trial court's order granting Palmer's motion to suppress. Palmer challenged the court of appeals' jurisdiction, and the court dismissed the appeal for want of jurisdiction.
STANDARD OF REVIEW	The court reviewed the existence of appellate jurisdiction under the statutory requirements governing a State's appeal from an order granting a motion to suppress.
PRECEDENTIAL VALUE	published
PARTIES	The State of Texas v. Zachary Palmer

TOPICS

- appellate jurisdiction
- criminal procedure
- appellate procedure
- suppression of evidence
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a timely notice of appeal from an order granting a motion to suppress is effective when signed by an assistant district attorney without identifying the elected district attorney's personal authorization.
2. Whether an untimely amended notice of appeal or a post-deadline affidavit can cure a defective notice or establish jurisdiction retroactively under Texas Code of Criminal Procedure article 44.01.

HOLDINGS

1. A notice of appeal under Texas Code of Criminal Procedure article 44.01 is defective when it is signed by an assistant district attorney and the appellate record contains no contemporaneous signature or other written expression showing that the elected district attorney personally authorized the specific appeal.
2. An amended notice of appeal filed after the article 44.01(d) deadline cannot cure the defective original notice, and post-deadline ratification cannot retroactively confer appellate jurisdiction.
3. A post-deadline affidavit may, in some circumstances, prove that a prosecuting attorney timely made the appeal, but it did not do so here because the original notice was facially defective and contained no indication of personal authorization.

KEY QUOTATIONS

*“Because it would have been difficult for the Legislature to have more clearly excluded assistant prosecutors from its definition of ‘prosecuting attorney,’ we interpret section (i) to mean what it plainly states on its face: a ‘prosecuting attorney,’ as used in Article 44.01, does not include under any circumstance an assistant prosecutor or other subordinate.” (*4)*

*“The district attorney’s sworn statement that he authorized the assistant district attorney to perfect an appeal in this case proves compliance with Article 44.01 at the time the notice was filed.” (*10)*

*“If there is no compliance within the twenty-day window, the window is thereafter closed.” (*12)*

FACTUAL BACKGROUND

The trial court granted Zachary Palmer’s motion to suppress. The State filed its notice of appeal within the statutory twenty-day period, but the notice was signed only by an assistant district attorney and did not state that the elected district attorney had authorized the appeal. After the deadline, the State filed an amended notice signed by the district attorney and an affidavit asserting that authorization had existed when the original notice was filed.

PROCEDURAL HISTORY

The trial court signed the suppression order on April 1, 2014. The State timely filed a notice of appeal on April 7, 2014, but the notice was signed by an assistant district attorney and did not identify or reference authorization by the elected district attorney. After the twenty-day statutory deadline expired, the State filed an amended notice signed by the district attorney and an affidavit stating that the district attorney had authorized the original appeal.

The court of appeals held that the original notice was defective, that the amended notice was untimely and could not cure the defect, and that the post-deadline affidavit was ineffective.

DISPOSITION

dismissed

CASES CITED

- State v. Muller, 829 S.W.2d 805 (Tex. Crim. App. 1992)
- State v. Boseman, 830 S.W.2d 588 (Tex. Crim. App. 1992)
- State v. Riewe, 13 S.W.3d 408 (Tex. Crim. App. 2000)
- State v. Blankenship, 146 S.W.3d 218 (Tex. Crim. App. 2004)
- State v. White, 261 S.W.3d 65 (Tex. App.—Austin 2007)
- State v. Shelton, 830 S.W.2d 605 (Tex. Crim. App. 1992)
- State v. Colyandro, 233 S.W.3d 870 (Tex. Crim. App. 2007)
- Coffey v. State, 979 S.W.2d 326 (Tex. Crim. App. 1998)
- State v. Bates, 889 S.W.2d 306 (Tex. Crim. App. 1994)
- State v. Redus, 445 S.W.3d 151 (Tex. Crim. App. 2014)
- State v. Palmer, 2015 Tex. App. LEXIS 6572 (Tex. App.—Fort Worth June 25, 2015)
- State v. Medrano, 67 S.W.3d 892 (Tex. Crim. App. 2002)
- State v. Roberts, 940 S.W.2d 655 (Tex. Crim. App. 1996)
- Bayless v. State, 91 S.W.3d 801 (Tex. Crim. App. 2002)