

COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS AT FORT WORTH

Ex Parte Brian Cole v. the State of Texas

No. 02-25-00367-CR; No. 02-25-00368-CR (Tex. App.—Fort Worth Jan. 8, 2026) (mem. op.) · No. Nos. 02-25-00367-CR and 02-25-00368-CR · Decided January 8, 2026

SUMMARY

The Fort Worth Court of Appeals dismissed Brian Cole's appeals for want of jurisdiction because the trial court had not signed a final judgment or other appealable order addressing his pretrial habeas corpus applications. The court also declined to abate the appeals or compel a ruling because Cole's filings did not satisfy the requirements for a mandamus petition.

CASE DETAILS

|                       |                                                                                                                                         |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals for the Second District of Texas at Fort Worth                                                                         |
| WRITING FOR THE COURT | Per Curiam; Wallach, J.; Sudderth, C.J.; Walker, J.                                                                                     |
| JURISDICTION          | Court of Appeals for the Second District of Texas at Fort Worth                                                                         |
| DECIDED               | January 8, 2026                                                                                                                         |
| DOCKET                | Nos. 02-25-00367-CR and 02-25-00368-CR                                                                                                  |
| DISPOSITION           | dismissed                                                                                                                               |
| PROCEDURAL POSTURE    | Appeal from the trial court's failure to rule on pretrial applications for writs of habeas corpus.                                      |
| STANDARD OF REVIEW    | The court reviewed its own appellate jurisdiction and whether Cole's filings satisfied the procedural requirements for mandamus relief. |
| PRECEDENTIAL VALUE    | Nonprecedential memorandum opinion; marked Do Not Publish.                                                                              |
| PARTIES               | Brian Cole v. the State of Texas                                                                                                        |

TOPICS

- appellate jurisdiction
- writ of certiorari
- post-conviction relief
- criminal procedure
- remedies

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether the court of appeals had appellate jurisdiction over appeals from the trial court's failure to rule on pretrial habeas applications when no final judgment or appealable order had been signed.
2. Whether Cole's jurisdictional response could support mandamus relief compelling the trial court to hear and rule on his habeas applications.

## HOLDINGS

1. The court of appeals lacked jurisdiction because the trial court had signed neither a final judgment nor an appealable interlocutory order.
2. Cole was not entitled to mandamus relief because his filings did not satisfy the requirements of Texas Rule of Appellate Procedure 52.

## KEY QUOTATIONS

*“a final judgment or an appealable order is necessary for this court to obtain jurisdiction”*

## FACTUAL BACKGROUND

Cole had pending pretrial applications for habeas corpus in the trial court. The trial court had not ruled on those applications and had not signed any final judgments or appealable interlocutory orders. Cole sought appellate intervention to compel a hearing and ruling within thirty days.

## PROCEDURAL HISTORY

Brian Cole filed two appeals complaining that the 485th District Court had not ruled on his pretrial habeas applications. The court of appeals notified Cole that it appeared to lack jurisdiction because the trial court had signed neither a final judgment nor an appealable interlocutory order. Cole responded with a motion seeking to invoke appellate jurisdiction, abate the appeals, compel a ruling, and obtain mandamus relief, but the court dismissed the appeals for want of jurisdiction and denied any construed request for mandamus relief.

## DISPOSITION

dismissed

## CASES CITED

- Ahmad v. State, 158 S.W.3d 525, 526 (Tex. App.—Fort Worth 2004, pet. ref'd)
- McCray v. State, No. 02-24-00179-CR, 2024 WL 3195116, at \*1 (Tex. App.—Fort Worth June 27, 2024, no pet.) (mem. op., not designated for publication)
- Ex parte Mims, Nos. 02-24-00324-CR, 02-24-00325-CR, 02-24-00326-CR, 2025 WL 647354, at \*1 (Tex. App.—Fort Worth Feb. 27, 2025, pet. ref'd) (mem. op., not designated for publication)
- Thomas v. Tex. Dep't of Crim. Just.—Institutional Div., 3 S.W.3d 665, 667 (Tex. App.—Fort Worth 1999, no pet.)
- Ex parte Yezak, No. 03-22-00582-CR, 2022 WL 15526491, at \*1 (Tex. App.—Austin Oct. 28, 2022, no pet.) (mem. op., not designated for publication)

OPINION

PER CURIAM.

In the Court of Appeals Second Appellate District of Texas at Fort Worth  
\_\_\_\_\_  
No. 02-25-00367-CR No. 02-25-00368-CR  
\_\_\_\_\_  
EX PARTE BRIAN COLE On Appeal from the 485th District  
Court Tarrant County, Texas Trial Court Nos. 1787785, 1788991 Before Wallach, J.; Sudderth,  
C.J.; and Walker, J. Per Curiam Memorandum Opinion MEMORANDUM OPINION Brian Cole  
filed these appeals complaining that the trial court had not ruled on his pretrial applications for  
habeas corpus.

However, we do not have jurisdiction over an appeal unless a trial court has signed an appealable order. See *Ahmad v. State*, 158 S.W.3d 525, 526 (Tex. App.—Fort Worth 2004, pet. ref’d) (noting that a criminal defendant may generally appeal only from a final judgment); see also *McCray v. State*, No. 02-24-00179-CR, 2024 WL 3195116, at \*1 (Tex. App.—Fort Worth June 27, 2024, no pet.) (mem. op., not designated for publication) (noting that “a final judgment or an appealable order is necessary for this court to obtain jurisdiction”); *Ex parte Mims*, Nos. 02-24-00324-CR, 02-24-00325-CR, 02-24-00326-CR, 2025 WL 647354, at \*1 (Tex.

App.—Fort Worth Feb. 27, 2025, pet. ref’d) (mem. op., not designated for publication) (discussing when intermediate appellate court has jurisdiction over appeal from order denying pretrial writ of habeas corpus). Here, the trial court has not signed any final judgments or appealable interlocutory orders.

Accordingly, we notified Cole of our concern that we lacked jurisdiction over these appeals, and we cautioned him that we would dismiss the appeals unless he or another party filed a response showing grounds to continue them.

In response, Cole filed a “Motion to Invoke Jurisdiction and for Abatement to Compel Ruling on Pretrial Habeas Corpus Applications,” which we construe as his jurisdictional response. The response states that we have appellate jurisdiction under 2 Texas Rule of Appellate Procedure 31, see Tex. R. App. P. 31.1–31.4, but it does not show any grounds for continuing the appeals when the trial court has not signed any appealable orders.

Cole’s response also cites Texas Government Code Section 22.221 and asks this court to abate the appeals, compel the trial court to hold a hearing, and rule on his habeas applications within thirty days. See Tex. Gov’t Code Ann. § 22.221 (providing intermediate appellate courts with authority to issue writs of mandamus). Cole has not filed a petition for writ of mandamus and has not asked us to construe his notices of appeal or response as such a petition.

However, to the extent that Cole’s response constitutes a request that this court grant mandamus relief, we deny the request because his filings in this court do not meet the requirements of Texas

Rule of Appellate Procedure 52. See Tex. R. App. P. 52.3, 52.7(a); *Thomas v. Tex. Dep't of Crim. Just.—Institutional Div.*, 3 S.W.3d 665, 667 (Tex. App.—Fort Worth 1999, no pet.).

Because there does not appear to be any written, signed order from which to appeal, we dismiss the appeals for want of jurisdiction. See Tex. R. App. P. 43.2(f); see also *Ex parte Yezak*, No. 03-22-00582-CR, 2022 WL 15526491, at \*1 (Tex. App.—Austin Oct. 28, 2022, no pet.) (mem. op., not designated for publication) (dismissing appeal that sought review of trial court's failure to rule on habeas application).

3 Per Curiam Do Not Publish Tex. R. App. P. 47.2(b) Delivered: January 8, 2026 4