

**Motion Denied as Moot; Dismissed and Opinion filed May 28, 2020.**



**In The  
Fourteenth Court of Appeals**

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**NO. 14-19-00306-CR  
NO. 14-19-00308-CR  
NO. 14-19-00309-CR  
NO. 14-19-00310-CR  
NO. 14-19-00311-CR  
NO. 14-19-00312-CR  
NO. 14-19-00313-CR**

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**THE STATE OF TEXAS, Appellant**

**V.**

**KAHLIL DEAN, Appellee**

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**On Appeal from the 268th District Court  
Fort Bend County, Texas  
Trial Court Cause Nos. 18-DCR-083497, 18-DCR-083704, 18-DCR-083833,  
18-DCR-083834, 18-DCR-083835, 18-DCR-083836 & 18-DCR-083837**

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**OPINION**

The State of Texas appeals the district court's orders granting "Defendant's Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions." The State argues the district court's orders were (1) void

*ab initio* because, by statute, the court lacked authority to enter the order; and (2) erroneous because it held Texas Family Code section 54.02 (the discretionary transfer statute) unconstitutional. We dismiss the State's appeal for lack of jurisdiction.

### **BACKGROUND**

Appellee, Kahlil Dean, was charged with aggravated robbery in cause numbers 18-DCR-083833, 18-DCR-083834, and 18-DCR-083835. He was also charged with assault of a public servant in cause numbers 18-DCR-083836 and 18-DCR-083837.<sup>1</sup>

On July 6, 2018, the State filed a first amended petition for discretionary transfer to a criminal district court or a district court for criminal proceedings in the County Court at Law No. 4 sitting as a juvenile court in Fort Bend County. The State alleged there is probable cause that Appellee committed three aggravated robberies and two assaults of a public servant in September 2017 (while he was a juvenile). The State moved for the juvenile court to waive its jurisdiction and transfer Appellee in accordance with Texas Family Code section 54.02 to the appropriate district court for criminal proceedings for prosecution of the alleged five offenses as an adult. After a hearing on July 19, 2018, the juvenile court waived its exclusive jurisdiction and transferred Appellee to district court to stand trial as an adult. The same day,

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<sup>1</sup> Although the appellate record includes records in trial court cause numbers 18-DCR- 083497 and 18-DCR-083704, these records do not contain charges against Appellee. Instead, the records in cause numbers 18-DCR-083497 and 18-DCR-083704 contain different documents and papers from the juvenile court file that were transferred and released to trial court cause numbers 18-DCR-083833, 18-DCR-083834, 18-DCR-083835, 18-DCR-083836, and 18-DCR-083837 after the juvenile court waived its jurisdiction, the case was transferred to district court, and Appellee was charged by indictment with the five offenses listed above in August 2018. Nonetheless, the district court also signed orders in cause numbers 18-DCR-083497 and 18- DCR-083704, and the State filed notices of appeal in these two cause numbers in addition to cause numbers 18-DCR-083833, 18-DCR-083834, 18-DCR-083835, 18-DCR-083836, and 18- DCR-083837.

Appellee waived his right to appeal the juvenile court’s “waiver of jurisdiction and discretionary transfer to Criminal Court.” Appellee’s case was transferred to the 268th District Court in Fort Bend County. Appellee was indicted by a grand jury for three aggravated robberies and two assaults of a public servant in the above listed five cause numbers.

On March 11, 2019, Appellee filed a “Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions” in each cause number<sup>2</sup>, and argued:

- “[T]he juvenile court’s stated ‘reasons for waiver’ were supported by insufficient evidence and the juvenile court therefore abused its discretion by waiving jurisdiction over” Appellee.
- “[T]he State failed to prove that it was not practicable to prosecute [Appellee] as a juvenile despite its use of due diligence to do so.”
- The juvenile court abused its discretion by “certifying [Appellee] as an adult because of the tenuousness of the evidence underlying the decision, in particular the State failed to provide the juvenile court with all of the [Appellee]’s juvenile school records including . . . all special education records; and further the expert’s conclusions were unfounded and did not support the decision, particularly with respect to the [Appellee]’s lack of maturity, given the failure to consider all education and special education records.”
- “[T]he State has used the transfer and certification process as an artifice [to] circumvent the protections afforded juveniles under [t]he Texas Family Code

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<sup>2</sup> “Each cause number” means: 18-DCR-083497, 18-DCR-083704, 18-DCR-083833, 18-DCR-083834, 18-DCR-083835, 18-DCR-083836, and 18-DCR-083837.

Sec[tion] 51.09 and Sec[tion] 51.095.”

- Appellee’s constitutional right to trial by jury was violated when the trial court, instead of a jury, decided to transfer him from juvenile court to stand trial as an adult in district court contrary to the Supreme Court’s pronouncements in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). “The exposure to adult punishment greatly exceeds the maximum punishment that he would be exposed to as a juvenile. However, the decisions that are made to expose him to that increased punishment are not made by a jury and found beyond a reasonable doubt, but by a judge and by a preponderance of the evidence.”

The district court held a hearing on Appellee’s motions on three different days. On March 29, 2019, the district court signed an order granting “Defendant’s Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions” in cause numbers 18-DCR-083497, 18-DCR-083704, 18-DCR- 083833, 18-DCR-083835, 18-DCR-083836, and 18-DCR-083837 by placing a check mark next to the line stating “ORDERED that said Motion is in all things GRANTED.”

The district court also signed an order in cause number 18-DCR-083834 on March 29, 2019, but it failed to place a check mark next to the line stating “ORDERED that said Motion is in all things GRANTED.” Several weeks later, the State asked the district court to sign the “State’s Proposed Amended Order on Defendant’s Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions” because the district court “inadvertently did not check off the box indicating whether the order was granted or denied.” On May 28, 2019, the district court signed the proposed order in cause number 18- DCR-083834, which corrected the district court’s omission and stated “the COURT hereby ORDERS that the Defendant’s Motion in Bar of Prosecution for Lack of Jurisdiction and for

Violation of Constitutional Provisions is hereby GRANTED on this 28<sup>th</sup> day of May, 2019.”

In the meantime, the State filed in each cause number a “Motion for Reconsideration and Alternative Motion for Clarification of its Order Granting Defendant’s Motion in Bar” on April 3, 2019. The State also filed notices of appeal in each cause number on April 16, 2019, stating the district court granted “Defendant’s Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions”, and asserting it is appealing “the trial court’s order dismissing the State’s indictment[s].” In its notices of appeal and appellate brief, the State contends it is authorized to pursue an appeal pursuant to article 44.01(a)(1) of the Texas Code of Criminal Procedure because the district court “dismissed the State’s indictments.” *See* Tex. Code Crim. Proc. Ann. art. 44.01(a)(1). More specifically, the State contends in its appellate brief:

Appellee filed a “Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions” arguing that the adult indictments should be dismissed and the case returned to juvenile court because the juvenile court’s waiver of jurisdiction was improper on various grounds. (1CR91). The district court held a hearing on this motion over several days. (2RR-4RR). The district court ultimately granted these motions and dismissed the State’s indictments in these cases. (1CR104). The State appealed those rulings in accordance with Texas Code of Criminal Procedure article 44.01(a)(1) (allowing the State to appeal an order of a criminal court if the order dismisses an indictment, information, or complaint or any portion of an indictment, information, or complaint).

Contrary to the State’s assertion, Appellee in his motions did not argue or request that the indictments should be dismissed and the case returned to the juvenile court. Nor did the district court sign any order dismissing Appellee’s indictments.

We issued an order on February 20, 2020, informing the State that (1) an order dismissing the State's indictments so as to authorize the State's appeal under article 44.01(a)(1) does not appear in any of the trial court records before us; and (2) we would dismiss its appeals "for lack of jurisdiction unless the parties demonstrate our jurisdiction on or before March 11, 2020."

On March 11, 2020, the State filed a response to this court's order. It again claimed:

Appellee filed a "Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions" arguing that the adult indictments should be dismissed and the case returned to juvenile court because the juvenile court's waiver of jurisdiction was improper on various grounds. The district court ultimately granted these motions and dismissed the State's indictments in these cases.

The State contended the district court's "order is an order which, in effect dismisses an indictment regardless of what it is entitled, and therefore the State may appeal that order" pursuant to Texas Code of Criminal Procedure article 44.01(a)(1). However, contrary to the State's contention, Appellee in his motions did not argue or request that the indictments should be dismissed and the case returned to the juvenile court; again, the district court did not sign an order indicating dismissal of Appellee's indictments.

We then issued an order on April 7, 2020, instructing the district court to "clarify its signed order[s] and state whether, by way of signing an order granting 'Defendant's Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions', it intended to and dismissed the State's indictments in the above-numbered cause numbers."

On April 10, 2020, the State filed "State's Motion to Supplement the Record

and Response to this Court’s Order to the Trial Court to Clarify its Order” to “assist in clarifying the trial court’s Order and the jurisdiction of this court.” In its motion, the State stated:

Following the entry of the trial court’s order granting Appellee’s Motion in Bar, the State filed a “Motion for Reconsideration and Alternative Motion for Clarification of Its Order Granting Defendant’s Motion in Bar.” The 268<sup>th</sup> District Court granted that motion [on April 12, 2019], and its order stated, in relevant part, that the court, “GRANTS the State’s Motion for Reconsideration, withdraws the Order Granting Defendant’s Motion in Bar of Prosecution, and DENIES Defendant’s Motion in Bar of Prosecution.” . . .

Through an oversight, this Order does not appear in the Clerk’s Record. The State would hereby move to supplement the Clerk’s Record to include this order as it may be dispositive of the appeal and this Court’s Order to the 268<sup>th</sup> Judicial District Court to clarify its order. Tex. R. App. P. 34.5(c)(1).

The State also made arguments regarding its right to appeal and this Court’s jurisdiction. The State prayed that this “Court order that the Clerk’s Record be supplemented and that the State’s issues be found meritorious and this Court find that it has jurisdiction to consider this appeal and ultimately the district court’s order dismissing the State’s indictments be overturned and the cases remanded to the 268<sup>th</sup> District Court for further proceedings.”

On April 13, 2020, the State designated, pursuant to Texas Rule of Appellate Procedure 34.5, the district court’s “Order on State’s Motion for Reconsideration and in the Alternative Motion for Clarification”, signed on April 12, 2019 in cause numbers 18-DCR-083833, 18-DCR-083834, 18-DCR-083835, 18-DCR-083836, and 18-DCR-083837, “be included in the Clerk’s Record on the State’s appeal.”

On April 16, 2020, supplemental clerk’s records were filed in this court. They contained the district court’s April 12, 2019 “Order on State’s Motion for Reconsideration and in the Alternative Motion for Clarification”, which stated that

the district court “GRANTS the State’s Motion for Reconsideration, withdraws the Order Granting Defendant’s Motion in Bar of Prosecution, and DENIES Defendant’s Motion in Bar of Prosecution” in cause numbers 18-DCR-083833, 18-DCR-083834, 18-DCR-083835, 18-DCR-083836, and 18-DCR-083837.<sup>3</sup> The supplemental clerk’s records also contained the “State’s Proposed Order in Response to the 14<sup>th</sup> Court of Appeals’ Order to the 268<sup>th</sup> District Court to Clarify the 268<sup>th</sup> District Court’s Order on Defendant’s ‘Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions’” signed by the district court in the above five cause numbers on April 13, 2020. Each order provides in pertinent part:

The Court held a hearing on “Defendant’s Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions,” wherein it orally granted said motion on March 29, 2019. The Court then signed an order reflecting its grant of relief on this motion on the same day, March 29, 2019. The 14<sup>th</sup> Court of Appeals has ordered this Court to clarify its order granting relief as to whether this Court intended to dismiss the State’s indictments against the Defendant.

The Court hereby clarifies its order to reflect that the Court . . . DID NOT intend to dismiss the State’s indictments.

#### **JURISDICTION**

The State argues it has the right to appeal the district court’s orders granting “Defendant’s Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions” because the district court, by granting Appellee’s motions, dismissed the State’s indictments in cause numbers 18-DCR- 083833, 18-DCR-083834, 18-DCR-083835, 18-DCR-083836, and 18-DCR- 083837. The State contends it may appeal the district court’s “rulings in accordance with Texas Code

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<sup>3</sup> In light of the filed supplementation, we denied as moot that part of the State’s motion asking “to supplement the Clerk’s Record to include” the district court’s April 12, 2019 orders. We took the remainder of the State’s motion with the case.



of Criminal Procedure article 44.01(a)(1).”

Article 44.01(a)(1) permits the State to “appeal an order of a court in a criminal case if the order . . . dismisses an indictment, information, or complaint or any portion of an indictment, information, or complaint.” Tex. Code Crim. Proc. Ann. art. 44.01(a)(1); *see also State v. Rosseau*, 396 S.W.3d 550, 555 (Tex. Crim. App. 2013); *State v. Richardson*, 383 S.W.3d 544, 545 (Tex. Crim. App. 2012).

Here, contrary to the State’s assertion, the district court did not dismiss the indictments against Appellee when it granted “Defendant’s Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions.” None of the records before us contains an order dismissing Appellee’s indictments. Instead, we have before us the “State’s Proposed Order in Response to the 14<sup>th</sup> Court of Appeals’ Order to the 268<sup>th</sup> District Court to Clarify the 268<sup>th</sup> District Court’s Order on Defendant’s ‘Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions’” signed by the district court in cause numbers 18-DCR-083833, 18-DCR-083834, 18-DCR- 083835, 18-DCR-083836, and 18-DCR-083837 on April 13, 2020. As instructed by this Court, the district court clarified its previous orders granting “Defendant’s Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions” and stated in its April 13, 2020 orders that (1) it “DID NOT intend to dismiss the State’s indictments” and (2) the Court did not dismiss indictments in this case.

Based on the records before us, we hold that the district court’s orders granting “Defendant’s Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions” in cause numbers 18-DCR-083833, 18-DCR-083834, 18-DCR-083835, 18-DCR-083836, and 18-DCR-083837 did not dismiss the State’s indictments and that, therefore, the State’s appeal is not permitted

under article 44.01(a)(1).<sup>4</sup> See Tex. Code Crim. Proc. Ann. art. 44.01(a)(1). Accordingly, we lack jurisdiction over the State’s appeal. *See id.*

### CONCLUSION

We dismiss the State’s appeal for lack of jurisdiction. In light of our disposition, we deny the remainder of the State’s April 10, 2020 motion taken with the case as moot.

*/s/ Meagan Hassan*

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Meagan Hassan  
Justice

Panel consists of Justices Zimmerer, Spain, and Hassan.  
Publish — Tex. R. App. 47.2(b).

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<sup>4</sup> Further, the district court denied Appellee’s “Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions” in cause numbers 18-DCR-083833, 18-DCR-083834, 18-DCR-083835, 18-DCR-083836, and 18-DCR-083837 on April 12, 2019, when it signed orders in these cause numbers on the State’s motions for reconsideration and stated it “Denies Defendant’s Motion in Bar of Prosecution.” The district court had plenary power to sign orders denying Appellee’s “Motion in Bar of Prosecution for Lack of Jurisdiction and for Violation of Constitutional Provisions” in these cause numbers. *See State v. Aguilera*, 165 S.W.3d 695, 697-98 (Tex. Crim. App. 2005) (A trial court’s plenary power expires thirty days after the sentence or an appealable order is signed, unless a party timely files a post-judgment motion.); *see also In re State ex rel. Sistrunk*, 142 S.W.3d 497, 503 (Tex. App.— Houston [14th Dist.] 2004, no pet.) (“Generally, a trial court has plenary jurisdiction over a case for the first thirty days after sentencing because it has the authority to receive a motion for new trial (or motion in arrest of judgment) within that time period and to resolve the merits of that motion within 75 days after sentencing. A court has inherent power to correct, modify, vacate, or amend its own rulings so long as the court does not exceed a statutory timetable.” (internal citations omitted)).