Dismissed and Opinion filed March 16, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-97-01253-CR

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NANCY ANN REYNA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law Number 8
Harris County, Texas
Trial Court Cause No. 97-26141

O P I N I O N

Appellant was charged by information with possession of marihuana, in a useable quantity of less than two ounces. After the trial judge denied her pretrial motion to suppress, she pled "guilty" pursuant to an agreed punishment recommendation. The trial court deferred a finding of guilt and placed appellant on probation for one year. Appellant filed a general notice of appeal that did not comply with Appellate Rule 25.2(b)(3)(B). The State argues appellant's improper notice deprives us of jurisdiction to hear this case. We agree and dismiss for want of jurisdiction.

Jurisdiction over Appeal

Initially, the State argues this court has no jurisdiction over this appeal because appellant's notice of appeal did not comply with Appellate Rule 25.2(b)(3). Appellate Rule 25.2(b)(3)'s simple requirements for notices of appeal are as follows:

> (3) But if the appeal is from a judgment rendered on the defendant's plea of guilty or nolo contendere under Code of Criminal Procedure article 1.15, and the punishment assessed did not exceed the punishment recommended by the prosecutor and agreed to by the defendant, the notice must:
>
> (A) specify that the appeal is for a jurisdictional defect;
>
> (B) specify that the substance of the appeal was raised by written motion and ruled on before trial; or
>
> (C) state that the trial court granted permission to appeal.

TEX. R. APP. P. 25.2(b)(3).

Appellant's general notice of appeal, which was signed by the trial judge, did not "specify" the substance of her appeal was raised by written motion and denied by the trial court or that the trial court granted her permission to appeal.[1] *See* TEX. R. APP. P. 25.2(b)(3)(B),(C). Failure to comply with this requirement limits our review to nonjurisdictional issues. *See Jones v. State*, 796 S.W.2d 183, 186-87 (Tex. Crim. App. 1990); *Gatlin v. State*, 863 S.W.2d 236, 237 (Tex. App.–Houston [14th Dist.] 1993, no pet.); *see also Payne v. State*, 931 S.W.2d 56, 57-58 (Tex. App.–Houston [14th Dist.] 1996, pet. ref'd).

An appellant may substantially comply with the notice of appeal rule where the record contains an order, signed by the trial court, that reflects both the trial court's approval for appellant to appeal and the appeal is from a pretrial motion brought before the trial court was ruled on before trial. *See Riley v. State*, 825 S.W.2d 699, 701 (Tex. Crim. App. 1992). In *Riley*, Riley's written notice of appeal stating only she wished to appeal, she was indigent and desired an appointment of appellate counsel. *See id*. at

[1] We note Rule 25.2(b)(3)'s requirements can be met by use of a simple "form" checklist notice of appeal.

701. The notice did not contain a statement, as required by former Appellate Rule 40(b)(1)[2], that the trial court granted permission to appeal or that the matters appealed were raised by written motion and ruled on before trial. Included in the record was an order, signed by the trial judge, entitled, "Order Limiting Defendant's Appeal." This order stated Riley's punishment was assessed pursuant to a plea bargain, the trial court allowed an appeal pursuant to Article 44.02, Code of Criminal Procedure, and a motion to suppress was raised before trial. *See id*. Although Riley's notice did not satisfy Appellate Rule 40(b)(1), the Court of Criminal Appeals found "the existence of the order, timely filed in the appellate record, is sufficient" to give the court of appeals jurisdiction over nonjurisdictional defects. *Id*. The Court stated:

> We hold that, under the facts of this case, when all the information required by Rule 40(b)(1) is contained in an order by the trial court and the order is in the appellate record along with a timely filed notice of appeal, the Court of Appeals has jurisdiction to address jurisdictional and also those non-jurisdictional defects recited in the order.
>
> Appellant's notice of appeal coupled with the court's order *substantially complied* with Rule 40(b)(1) to permit review of properly preserved non-jurisdictional issues.

Riley, 825 S.W.2d at 701. (Emphasis added).

Recently, this Court held, under certain facts, substantial compliance with Appellate Rule 25.2(b)(3) can permit appellate review. *See Gomes v. State*, 9 S.W.3d 170, 171 (Tex. App.–Houston [14th Dist.] 1999, no pet. h.) (en banc). In *Gomes*, the defendant filed a general notice of appeal that did not indicate appellant was "appealing an issue that was raised by written motion and ruled on before trial nor does it indicate that permission was granted by the trial court to appeal any nonjurisdictional issues." *Id*. Although the words of the notice did not comply with Appellate Rule 25.2(b)(3), we found we had jurisdiction because there was substantial compliance with the Rule.

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[2] Former Appellate Rule 40(b)(1) states, in pertinent part:
Notice of appeal shall be given in writing filed with the clerk of the trial court. Such notice shall be sufficient if it shows the desire of the defendant to appeal from the judgment or other appealable order; but if the judgment was rendered upon his plea of guilty or nolo contendere pursuant to Article 1.15, Code of Criminal Procedure, and the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, in order to prosecute an appeal for a non-jurisdictional defect or error that occurred prior to entry of the plea the notice shall state that the trial court granted permission to appeal or shall specify that those matters were raised by written motion and ruled on before trial.

We noted in Gomes three indications of his substantial compliance: (1) the notice of appeal, which was signed by the trial judge, contained a "handwritten notation on the upper, right-hand corner, indicating that the appeal is limited to the trial court's ruling which denied Appellant's motion to suppress;" and (2) the docket sheet had an entry stating "Notice of Appeal filed on Motion to Suppress Only;" and (3) the judgment, signed by the trial judge, noted the notice of appeal was filed on "Mo Suppress Only." *Id*; *see Miller v. State*, — S.W.3d —, 1999 WL 1267220 *2 (Tex. App.–Houston [14th Dist.] Dec. 30, 1999, no pet. h.) (following *Gomes*).

Appellant's notice of appeal does not specify the substance of her appeal was raised by written motion and ruled on by the trial court nor is there any evidence, as in *Riley* and *Gomes*, of any order or document signed by the trial judge revealing her substantial compliance with Appellate Rule 25.2 (b) (3).

Accordingly, we dismiss for want of jurisdiction.

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Joe L. Draughn
Justice

Judgment rendered and Opinion filed March 16, 2000.
Panel consists of Justices Cannon, Draughn, and Hutson-Dunn.*
Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Bill Cannon, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.