

CAUSE NO.
IN THE SUPREME COURT OF TEXAS

FILED
17-0216
3/17/2017 12:46:12 PM
tex-15924074
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

IN RE ETHAN ANTHONY COUCH,

RELATOR

**PETITION FOR WRIT OF MANDAMUS
IN CAUSE NUMBERS 1450917, 1450918, 1450920, and 1450921
IN CRIMINAL DISTRICT COURT NUMBER TWO
OF TARRANT COUNTY, TEXAS
HONORABLE WAYNE SALVANT, PRESIDING**

**WM. REAGAN WYNN
SBN: 00797708
KEARNEY/WYNN
ONE MUSEUM PLACE
3100 WEST 7TH STREET
SUITE 420
FORT WORTH, TX 76107
PHONE: (817) 336-5600
FAX: (817) 336-5610
rwynn@kearneywynn.com**

**SCOTT BROWN
SBN: 03127100
ONE MUSEUM PLACE
3100 WEST 7TH STREET
SUITE 420
FORT WORTH, TX 76107
PHONE: (817) 336-5600
FAX: (817) 336-5610
sb@scottbrownlawyer.com**

ATTORNEYS FOR RELATOR

IDENTITY OF PARTIES AND COUNSEL

The parties are:

Ethan Anthony Couch

Relator

Hon. Wayne Salvant

Respondent

Presiding Judge

Criminal District Court Number Two

Tarrant County, Texas

401 West Belknap St.

Fort Worth, Texas 76196

(817) 884-1347

Hon. Wm. Reagan Wynn

Counsel for Relator

3100 West 7th Street, Suite 420

Fort Worth, Texas 76107

(817) 336-5600

(817) 336-5610 (fax)

Hon. Scott Brown

Counsel for Relator

3100 West 7th Street, Suite 420

Fort Worth, Texas 76107

(817) 336-5600

(817) 336-5610 (fax)

Hon. Lloyd Whelchel

Counsel for the State

Tarrant County District Attorney's Office

401 West Belknap St.

Fort Worth, Texas 76196

(817) 884-1400

Hon. Riley Shaw

Counsel for the State

Tarrant County District Attorney's Office

401 West Belknap St.

Fort Worth, Texas 76196

(817) 884-1400

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Relator, through counsel, files this petition urging that the Court issue a writ of mandamus in cause numbers 1450917, 1450918, 1450920, and 1450921¹ in the Criminal District Court Number Two, Tarrant County, Texas. References to the one-volume Record prepared by Relator, as required by TRAP 52.7, will be as follows: “R.” followed by the pertinent page numbers.

STATEMENT OF THE CASE

On December 4, 2013, Relator, a juvenile at the time, was adjudicated delinquent of the offense of Intoxication Manslaughter as alleged in four paragraphs of a Petition filed in the 323rd District Court of Tarrant County, Texas, the designated juvenile court for Tarrant County.

On December 10, 2013, Relator was sentenced, by the judge of the 323rd District Court, to ten years confinement in the Texas Juvenile Justice Department with a possible transfer to the Texas Department of Criminal Justice. This sentence was probated for a period of ten years.

On April 5, 2016, the juvenile court transferred the “probation supervision” of Relator to “an appropriate adult District Court of Tarrant County Texas.”

¹ It is Relator’s position that his single juvenile case should not have been converted to four cases upon transfer. Therefore, Relator is filing one Petition for Writ of Mandamus.

On April 6, 2016, in anticipation of the transfer of supervision from the juvenile court, the Tarrant County District Attorney filed four cases of Intoxication Manslaughter against Relator. The Cause Numbers for those cases are 1450917, 1450918, 1450920, and 1450921. All four cases were filed in Criminal District Court Number Two of Tarrant County, the Honorable Wayne Salvant, presiding judge.

On April 13, 2016, Judge Salvant conducted a hearing and formally accepted Relator and his probated sentence. Judge Salvant imposed a probation condition of 180 days confinement in the Tarrant County Jail for each of the filed cases and further ordered that the 180 day periods of confinement run consecutive to each other, amounting to a condition of community supervision of a total of 720 days' confinement in the Tarrant County Jail.

On August 30, 2016, Relator filed a pleading entitled "Probationer's Plea to the Jurisdiction" in each of the four cause numbers in which Judge Salvant purported to act. On November 1, 2016, after a hearing, Judge Salvant entered a written order denying Relator's Plea to the Jurisdiction.

On January 24, 2017, Relator filed a Petition for Writ of Mandamus with the Second District Court of Appeals of Texas in Fort Worth requesting the same relief as requested herein. On February 2, 2017, the Court of Appeals issued a memorandum opinion denying relator's requested relief. Justices Meier, Walker, and Pittman participated in the opinion. The citation in the Court of Appeals is *In*

re Ethan Anthony Couch, 2017 WL 444441 (Tex.App. – Ft. Worth, Feb 2, 2017).

The Respondent in this case is Judge Wayne Salvant, presiding judge of Criminal District Court Number Two, Tarrant County, Texas.

STATEMENT OF JURISDICTION

Jurisdiction is vested in this Court by virtue of TEX. CONST. art. V, § 3. Statutory authority for filing this Petition is found in TEX. GOV'T. CODE § 22.002(a) (West 2016).

ISSUE PRESENTED

RELATOR WAS THE JUVENILE RESPONDENT IN AN ADJUDICATION OF DELINQUENCY PROCEEDING AND WAS PLACED ON A “DETERMINATE SENTENCE” JUVENILE PROBATION. PRIOR TO RELATOR’S NINETEENTH BIRTHDAY, THE JUVENILE COURT TRANSFERRED HIS SUPERVISION ON PROBATION TO “AN APPROPRIATE ADULT DISTRICT COURT” IN ACCORDANCE WITH THE DETERMINATE SENTENCING STATUTE. THE STATE THEN “FILED” FOUR “CASES” AGAINST RELATOR AND THOSE FOUR “CASES” WERE ASSIGNED TO RESPONDENT’S COURT. RELATOR FILED A PLEA TO THE JURISDICTION ARGUING THAT RESPONDENT LACKED SUBJECT MATTER JURISDICTION OVER THE SUPERVISION OF HIS JUVENILE DETERMINATE PROBATION BECAUSE RESPONDENT PRESIDES OVER A COURT OF LIMITED JURISDICTION THAT ONLY HAS JURISDICTION OVER CRIMINAL CASES AND JUVENILE MATTERS ARE CIVIL CASES. DID RESPONDENT CLEARLY ABUSE HIS DISCRETION BY DENYING RELATOR’S PLEA TO THE JURISDICTION?

STATEMENT OF FACTS

On September 11, 2013, a Petition was filed in the 323rd District Court, cause number 323-99049-J, alleging the then-juvenile aged Relator (Date of Birth: 04-11-97) had Engaged in Delinquent Conduct. [R. 1-7] In pertinent part, the Petition alleged the offense of Intoxication Manslaughter in four separate paragraphs

arising from a single motor vehicle accident. [R. 1-4] Each paragraph alleged a separate injured party but all paragraphs alleged the same offense date. [R. 1-4]

The Petition in Cause Number 323-99049-J was approved by the Grand Jury of Tarrant County for determinate sentencing pursuant to section 53.045, Texas Family Code, which approval was duly certified to the Juvenile Court and was entered in the record of the juvenile cause on September 13, 2013. [R. 8-9] The State did not file a motion seeking to have the Juvenile Court waive its jurisdiction and transfer Relator to a District Court for prosecution as an adult.

On December 4, 2013, Relator was found to have engaged in delinquent conduct in Cause Number 323-99049-J, namely four paragraphs of Intoxication Manslaughter, each of which was committed on the 15th day of June, 2013. [R. 10-11]. The juvenile court entered an affirmative finding that a deadly weapon was used in the commission of the offenses alleged in each paragraph. [R. 10-11]

On December 10, 2013, a disposition hearing was held in the juvenile court and Relator was sentenced in Cause Number 323-99049-J to ten years confinement in the Texas Juvenile Justice Department with a possible transfer to the Texas Department of Criminal Justice. However, this sentence was probated for a period of ten years in accordance with Sections 53.045 and 54.04(q), Texas Family Code.

On April 5, 2016, pursuant to Section 54.051(d), Texas Family Code, the

juvenile court transferred the “probation supervision” of Relator to “an appropriate adult District Court of Tarrant County Texas.” [R. 12-14] Such transfer was ordered to take effect on April 11, 2016 (Relator’s 19th birthday). [R. 13]

On April 6, 2016, in anticipation of the transfer of supervision from the juvenile court, the Tarrant County District Attorney filed four cases of Intoxication Manslaughter against Relator. The Cause Numbers for those cases are 1450917, 1450918, 1450920, and 1450921. [R. 15-18] All four of those cases were filed in Criminal District Court Number Two of Tarrant County, the Honorable Wayne Salvant, presiding judge. [R. 15-18]

On April 13, 2016, Judge Salvant conducted a hearing and formally accepted Relator and his probated sentence. [R. 19-64] Over Relator’s oral and written objections, Judge Salvant imposed a probation condition of 180 days confinement in the Tarrant County Jail for each of the filed “cases” and further ordered that the 180 day periods of confinement run consecutive to each other, amounting to a condition of community supervision of a total of 720 days’ confinement in the Tarrant County Jail. [R. 61-63, 65-67, 68-79]

On August 30, 2016, Relator filed a pleading entitled “Probationer’s Plea to the Jurisdiction” in each of the four cause numbers in which Judge Salvant purported to act. [R. 80-97] In this Plea to the Jurisdiction, Relator argued that Judge Salvant did not have jurisdiction over the subject matter of Relator’s case

because Relator's case is civil in nature and Criminal District Court Number Two of Tarrant County has only criminal jurisdiction [R. 80-97]

On November 1, 2016, Judge Salvant entered a written order denying Relator's Plea to the Jurisdiction.² Within that order, Judge Salvant concluded that Criminal District Court Number Two has subject matter jurisdiction of all four of Relator's cases. [See Appendix 1; R. 98] Judge Salvant's reasoning for this ruling was fleshed out, somewhat, during a hearing that was conducted on November 1st, 2016. [R. 99-109]

ARGUMENT

I.

STANDARD TO OBTAIN MANDAMUS RELIEF

In order to obtain mandamus relief from an order denying a motion to dismiss for lack of subject matter, a Relator must show: 1) the trial court clearly abused its discretion; and, 2) he has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004)(orig. proceeding).

Relator has no adequate remedy by appeal because there is no authority providing for a direct appeal from a District Court's acceptance of a transfer of probation from a juvenile court. Section 56.01 of the Texas Family Code sets out a

² As required by TRAP 52.3(k)(1)(A), a certified copy of Judge Savant's Order is attached to this Petition as Appendix 1.

child's right to appeal a juvenile court's order and describes which of those orders are appealable. *See* Tex. Fam.Code Ann. § 56.01. Section 56.01(c) specifically lists the orders from which the child may appeal. An order transferring a child's determinate sentence probation to an appropriate district court is not one of the orders enumerated in the statute. *See id.* § 56.01(c); *In re J.H.*, 176 S.W.3d 677, 679 (Tex.App. – Dallas 2005, no pet.)(stating that “the trial court's order transferring determinate sentence probation to an appropriate criminal district court is not an appealable order”)

Thus, the order transferring Relator’s determinate sentence probation to the appropriate adult district court is not an appealable order. *See In re J.H.*, 176 S.W.3d at 679. Logically, then, the receiving court’s order accepting the transfer (and setting probation conditions) is not an appealable order.

As is detailed below in Section “II” of Relator’s argument, the controlling statutory and case law governing the issue presented by Relator are clear and unambiguous. Therefore, Judge Salvant clearly abused his discretion when he denied Relator’s plea to the jurisdiction.

II.

**JUDGE SALVANT HAS NO SUBJECT MATTER JURISDICTION
OVER RELATOR’S JUVENILE DETERMINATE SENTENCE
PROBATION TRANSFER AND ALL ORDERS AND
CONDITIONS OF PROBATION ENTERED BY JUDGE SALVANT
ARE NULL AND VOID**

1. Subject Matter Jurisdiction

Subject matter jurisdiction exists by reason of the authority vested in a court by the Texas Constitution or a statute and cannot be conferred by agreement of the parties. *Garcia v. Dial*, 596 S.W.2d 524, 527 (Tex. Crim. App. 1980); *Ex parte Caldwell*, 383 S.W.2d 587, 589 (Tex. Crim. App. 1964). Any order or judgment entered by a court lacking subject matter jurisdiction is void and “a void judgment is a ‘nullity’ and can be attacked at any time.” *Nix v. State*, 65 S.W.3d 664, 667-68 (Tex. Crim. App. 2001). As early as 1928, the Court of Criminal Appeals defined “jurisdiction” as:

the right to adjudicate concerning the subject matter in a given case. (Citation omitted) Unless the power or authority of a court to perform a contemplated act can be found in the Constitution or laws enacted thereunder, it is without jurisdiction and its acts without validity.

Ex parte Armstrong, 110 Tex. Cr. R. 362, 8 S.W.2d 674, 675-676 (Tex. Crim. App. 1928).

The concept of subject matter jurisdiction is so fundamental that it cannot be ignored and a court must *sua sponte* address the issue. *State v. Roberts*, 940 S.W.2d 655, 657 (Tex. Crim. App. 1996), *overruled on other grounds*, *State v. Medrano*, 67 S.W.3d 892, 903 (Tex. Crim. App. 2002). In fact, “a court is ***obliged to ascertain that subject matter jurisdiction exists regardless of whether the parties question it.***” *Univ. of Tex. Sw. Med. Ctr. v. Loutzenhiser*, 140 S.W.3d 351, 358 (Tex. 2004) (emphasis added), *superseded by statute on other grounds*,

TEX. GOV'T CODE § 311.034 (West 2016). *See also City of Allen v. Pub. Util. Comm'n of Texas*, 161 S.W.3d 195, 199 (Tex. App. – Austin 2005, no pet.) (the question of subject matter jurisdiction can be raised at any time in the trial court or on appeal).

Subject matter jurisdiction may be raised for the first time on appeal and it may not be waived by the parties. *Texas Employment Comm'n v. International Union of Elec., Radio and Mach. Workers, Local Union No. 782*, 163 Tex. 135, 352 S.W.2d 252, 253 (1961); RESTATEMENT (SECOND) OF JUDGMENTS § 11, comment c (1982). *See also Gorman v. Life Insurance Co. of North America*, 811 S.W.2d 542, 547 (Tex. 1991), *cert. denied*, 502 U.S. 824 (1991).

**Constitutional Court vs. Statutory Court – Judge Salvant Presides
Over a Statutory Court With Jurisdiction Limited to Criminal Cases**

Whether a trial court has subject-matter jurisdiction is a question of law. *Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). The Texas Constitution and state statutes provide the sole sources of jurisdiction for Texas courts. *Chenault v. Phillips*, 914 S.W.2d 140, 141 (Tex. 1996). Under the Texas Constitution, the judicial power of the State is “vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices

of the Peace, and in such other courts as may be provided by law.” TEX. CONST. art. V, § 1. The Texas Constitution also authorizes the Texas Legislature to “establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and [to] conform the jurisdiction of the district and other inferior courts thereto.” *Id.*

Texas courts that are enumerated in the constitution are referred to as “constitutional courts,” while courts that are established pursuant to the legislature’s power to create “other courts” are referred to as “legislative” or “statutory” courts. 1 ROY W. McDONALD & ELAINE A. GRAFTON CARLSON, TEXAS CIVIL PRACTICE § 3:3 (2d ed. 2004); *see also* TEX. GOV’T CODE §§ 21.009(1), (2) (West2016).

The jurisdiction of District Courts is proscribed by Article V, §8, Texas Constitution. That section provides:

District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body. District Court judges shall have the power to issue writs necessary to enforce their jurisdiction. The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law. TEX. CONST. art. V, § 8; *See also* TEX. GOV’T. CODE § 24.7 (West 2016) (“[t]he district court has the jurisdiction provided by Article V, Section 8, of the Texas Constitution”).

Criminal District Court Number 2, is a “statutory court,” having been created by the Texas legislature (in Subchapter E of the Texas Government Code entitled “Criminal District Courts”) and not by the Texas Constitution. In creating Criminal District Court Number 2, the Texas Legislature specified its jurisdiction by reference to the statute creating Criminal District Court Number 1 of Tarrant County:

- (a) The Tarrant County Criminal Judicial District No. 2 is composed of Tarrant County.
- (b) Section 24.910, relating to the Tarrant County Criminal District Court No. 1, contains provisions applicable to both that court and the Tarrant County Criminal District Court No. 2.

TEX. GOV'T. CODE § 24.911 (West 2016). Section 24.910 provides:

- (a) The Tarrant County Criminal Judicial District No. 1 is composed of Tarrant County.
- (b) This section applies to the Tarrant County Criminal District Courts Nos. 1, 2, and 3.
- (c) The criminal district courts have jurisdiction of criminal cases within the jurisdiction of a district court. The criminal district courts also have concurrent original jurisdiction with the county criminal courts over misdemeanor cases. The criminal district courts do not have appellate misdemeanor jurisdiction.

TEX. GOV'T CODE § 24.910 (West 2016) (emphasis added).

This language can be contrasted to the language the Texas legislature used when it created Criminal District Court Number Four of Tarrant County. In that instance, the legislature provided, in relevant part:

(a) The Criminal Judicial District No. 4 of Tarrant County is composed of Tarrant County.

(b) The court *shall give preference to criminal cases*.

TEX. GOV'T CODE § 24.913 (West 2016) (emphasis added).

Chapter 24, Subchapter C of the Texas Government Code is known as the Judicial Districts Act of 1969. This section creates many “Special District Courts.” Each court created in Subchapter C “[that] is directed to give preference to specific matters or types of cases shall participate in all matters relating to juries, grand juries, indictments, and docketing of cases in the same manner as the existing district courts that are similarly directed within that county.” TEX. GOV'T CODE § 24.310 (West 2016). The legislature used the language “the court shall give preference to criminal cases” when it created the following Tarrant County Judicial District Courts: the 297th³, the 371st⁴, the 372nd⁵, the 396th⁶, and the 432nd⁷. With regard to the jurisdiction of the 213th Judicial District Court, the Texas legislature provided the following:

(a) The 213th Judicial District is composed of Tarrant County.

³ TEX. GOV'T. CODE § 24.474 (West 2016).

⁴ TEX. GOV'T. CODE § 24.516 (WEST 2016).

⁵ TEX. GOV'T. CODE § 24.517 (West 2016).

⁶ TEX. GOV'T. CODE § 24.541 (West 2016).

⁷ TEX. GOV'T. CODE § 24.576 (West 2016).

(b) In addition to other jurisdiction provided by law, the 213th District Court has concurrent original jurisdiction with the county criminal courts in Tarrant County over misdemeanor cases.

TEX. GOV'T CODE § 24.392 (West 2016).

Comparing the language used by the Texas legislature in creating the aforementioned courts, it is obvious Criminal District Courts 1, 2, and 3 have subject matter jurisdiction over only criminal cases whereas Criminal District Court Number 4 and the Judicial District Courts (the 213th, the 297th, the 371st, the 372nd, the 396th, and the 432nd) have both criminal and civil subject matter jurisdiction.

The inquiry does not end there. The language used by the Texas legislature in Chapter 24 of the Government Code makes it clear that several other Judicial District Courts in Tarrant County that have traditionally handled only civil cases actually have jurisdiction over criminal cases as well. The statutes creating these courts provide that they are to “give preference to civil matters.”⁸

⁸TEX. GOV'T. CODE § 24.118 (West 2016) (establishing the jurisdiction of the following Judicial District Courts: the 17th, the 48th, the 67th, and the 153rd); TEX. GOV'T. CODE § 24.150 (West 2016) (further clarifying the jurisdiction of the 48th Judicial District Court); TEX. GOV'T. CODE § 24.169 (West 2016) (further clarifying the jurisdiction of the 67th Judicial District Court); TEX. GOV'T. CODE § 24.352 (West 2016) (establishing the jurisdiction of the 141st Judicial District Court); TEX. GOV'T. CODE § 24.252 (West 2016) (further clarifying the jurisdiction of the 153rd Judicial District Court); TEX. GOV'T. CODE § 24.413 (West 2016) (establishing the jurisdiction of the 236th Judicial District Court); TEX. GOV'T. CODE § 24.488 (West 2016) (establishing the jurisdiction of the 342nd Judicial Court); TEX. GOV'T. CODE § 24.494 (West 2016) (establishing the jurisdiction of the 348th

Additionally, the Texas legislature has provided that two Tarrant County courts “shall give preference to family law matters.”⁹

Several Tarrant County courts, designated as “Family District Courts” by Chapter 24, Subsection D of the Texas Government Code, have the following subject matter jurisdiction:

(a) A family district court has the jurisdiction and power provided for district courts by the constitution and laws of this state. Its jurisdiction is concurrent with that of other district courts in the county in which it is located.

(b) A family district court has primary responsibility for cases involving family law matters. These matters include:

- (1) adoptions;
- (2) birth records;
- (3) divorce and marriage annulment;
- (4) child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency;
- (4) parent and child; and
- (5) husband and wife.

(c) This subchapter does not limit the jurisdiction of other district courts nor relieve them of responsibility for handling cases involving family law matters.

TEX. GOV'T CODE § 24.601 (West 2016).

The Legislature has established five such “Family District Courts” in

Judicial District Court); TEX. GOV'T. CODE § 24.498 (West 2016) (establishing the jurisdiction of the 352nd Judicial District Court).

⁹TEX. GOV'T. CODE § 24.408 (West 2016) (the 231st Judicial District Court); TEX. GOV'T.CODE § 24.410 (West 2016) (the 233rd Judicial District Court).

Tarrant County.¹⁰

By authority of Section 51.04(b), Texas Family Code, the Tarrant County Juvenile Board has designated the 323rd Judicial District Court as the sole juvenile court for this County.

2. Jurisdiction Transferred from Juvenile Court to Appropriate “District Court”

There are two ways in which a court with juvenile jurisdiction (hereinafter “Juvenile Court”) can transfer jurisdiction to an “adult” District Court. The first occurs when a Juvenile Court waives jurisdiction and transfers the juvenile case to an adult court (commonly known as “certification” as an adult). The procedure necessary for this type of transfer of jurisdiction is found in section 54.02, Texas Family Code. That section provides, in pertinent part: “[T]he Juvenile Court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court *or criminal district court for criminal proceedings* if:...” TEX. FAM. CODE § 54.02(a) (West 2016) (emphasis added). This type of transfer occurs prior to an adjudication of delinquency by the Juvenile Court.

¹⁰TEX. GOV’T. CODE § 24.630 (West 2016) (the 322nd Judicial District Court); TEX. GOV’T. CODE § 24.631 (West 2016) (the 323rd Judicial District Court); TEX. GOV’T. CODE § 24.632 (West 2016) (the 324th Judicial District Court); TEX. GOV’T. CODE § 24.633 (West 2016) (the 325th Judicial District Court); and TEX. GOV’T. CODE § 24.639 (West 2016) (the 360th Judicial District Court).

The second way in which a juvenile can be transferred by a Juvenile Court to an “adult” District Court occurs after the juvenile has been adjudicated delinquent and sentenced to a term of “determinate sentence probation.” This is the statutory type of transfer at issue in Relator’s case. The procedures for this type of transfer are found in section 54.051, Texas Family Code. That section provides, in pertinent part:

(a) On motion of the state concerning a child who is placed on probation under Section 54.04(q) for a period, including any extension ordered under Section 54.05, that will continue after the child’s 19th birthday, the juvenile court shall hold a hearing to determine whether to transfer the child to an appropriate district court or discharge the child from the sentence of probation.

(b) The hearing must be conducted before the person’s 19th birthday, or before the person’s 18th birthday if the offense for which the person was placed on probation occurred before September 1, 2011, and must be conducted in the same manner as a hearing to modify disposition under Section 54.05.

(c) If, after a hearing, the court determines to discharge the child, the court shall specify a date on or before the child’s 19th birthday to discharge the child from the sentence of probation.

(d) If, after a hearing, the court determines to transfer the child, the court shall transfer the child *to an appropriate district court* on the child’s 19th birthday.

TEX. FAM. CODE § 54.051 (a)-(d) (West 2016) (emphasis added).

The proceedings of the Juvenile Court in the instant case make it clear that Relator was transferred from the jurisdiction of the Juvenile Court pursuant to section 54.051. The Amended Order Transferring Relator’s supervision clearly

references this section in the first sentence. [R . 1 2] Furthermore, both the original Order placing Relator on juvenile determinate sentence probation and the Amended Order transferring Relator clearly reference section 54.04(q), Texas Family Code. As such, it is critical to note the distinction between what type of “adult” court can accept jurisdiction of Relator’s case and the type that cannot.

The unambiguous and clear language of the statute is that a transfer pursuant to §54.051 is made to “an appropriate *district court*.” See TEX. FAM. CODE §54.051(d) (West 2016) (emphasis added). The title of the transfer order from the Juvenile Court (Appendix 4) specifies that the transfer is to an appropriate “district court.” Further, at page 2, ¶ 2, the transfer order (Appendix 4) specifically provides: “IT IS THEREFORE ORDERED THAT the probation supervision of **ETHAN ANTHONY COUCH** be and hereby is transferred, pursuant to Texas Family Code Section 54.051(d), to an appropriate adult **District Court** of Tarrant County, Texas...” This is in clear contrast with the language of section 54.02, Texas Family Code, which provides, as noted above: “[T]he juvenile court may waive its exclusive original jurisdiction and transfer a child to the **appropriate district court or criminal district court** for criminal proceedings” See TEX. FAM. CODE §54.02 (West 2016) (emphasis added).

Thus, the Texas legislature has drawn a clear distinction between a

“district court” and a “criminal district court” and has demonstrated that it is capable of passing a statute conferring jurisdiction of a juvenile case to a “criminal district court” for criminal proceedings if it desires to do so. The Texas legislature specifically failed to provide for or allow transfer to a “criminal district court” having ONLY criminal jurisdiction, such as Judge Salvant’s court, in the determinate sentencing statutory scheme at issue in this case. *See* TEX. FAM. CODE § 54.051 (West 2016).

3. Criminal vs. Civil Jurisdiction – Juvenile is Civil

It is axiomatic that juvenile proceedings in Texas are civil, not criminal, in nature. *Carrillo v. State*, 480 S.W.2d 612, 615 (Tex. 1972); *J. J. H. v. State*, 557 S.W.2d 838, 839 (Tex. Civ. App.--Waco 1977, no writ). A juvenile case is commenced by a “petition” rather than an information or indictment, clearly indicating that a civil suit is commencing rather than a criminal one. *See* TEX. FAM. CODE §53.04 (West 2016); TEX. R. CIV. P. 22. The only “charging instrument” present in each of Relator’s cases is the original Petition Alleging Relator Engaged in Delinquent Conduct filed in the Juvenile Court on the 11th day of September, 2013 in cause number 323-99049-J.

In one limited situation, not applicable to this case, the Texas Legislature has permitted a juvenile Petition to be considered an indictment. That limited situation is only when all of the following conditions are met:

- 1) The grand jury approves the juvenile Petition for determinate sentencing under §53.045 of the Texas Family Code;
 - 2) The Juvenile Court orders the juvenile confined in The Texas Juvenile Justice Department; and,
 - 3) The juvenile is transferred to the Texas Department of Criminal Justice as provided by Section 152.00161(c) or 245.151(c), Human Resources Code.
- TEX. FAM. CODE § 53.045(d) (West 2016) (emphasis added).

Only when all of the above factors are present, the “juvenile court petition approved by a grand jury under this section [53.045] is an indictment presented by the grand jury.” *Id.* In this case, the Juvenile Court suspended its imposition of confinement in the Texas Juvenile Justice Department (“T.J.J.D.”) and, accordingly, Relator has never been confined in T.J.J.D. or transferred to the Texas Department of Criminal Justice. Thus, section 53.045(d) clearly does not apply in this case. This provision demonstrates that the Texas legislature is capable, if it sees fit, of converting a juvenile petition into a criminal indictment for certain purposes, but has specifically failed to do so in Relator’s situation. As discussed above, the Tarrant County Grand Jury never returned an indictment against Relator and the Petition was never in a position, procedurally, to be treated as an indictment under section 53.045(d). Further, as discussed above, the Petition in this case could not be an indictment under the express terms of the Family Code even though the Grand Jury “approved” it. *See* TEX. FAM. CODE § 53.045(c) (a grand jury asked by the State to approve a Petition for

determinate sentencing “has all the powers to investigate the facts and circumstances relating to a petition submitted under this section as it has to investigate other criminal activity *but may not issue an indictment unless the child is transferred to a criminal court as provided by Section 54.02 of this code.*” (emphasis added)). Finally, at no time has Relator affirmatively waived indictment and nocriminal information has been filed.

It is clear from reading section 54.051 in conjunction with section 54.02(a) that Relator’s juvenile determinate sentence transfer matter is a civil case transferred to an “appropriate district court.” The controlling case law holds that this matter, originating as it did in the Juvenile Court, is a civil rather than criminal suit. The aforementioned sections of the Texas Constitution and the Texas Government Code specifically limit the subject matter jurisdiction of Criminal District Court Number Two, Tarrant County, to criminal cases. Therefore, Judge Salvant has no subject matter jurisdiction over that matter or Relator.

Because Judge Salvant lacks subject matter jurisdiction over the matter and Relator, he has no authority to act whatsoever, and any orders, including the imposition of conditions of probation (*See* R. 61-63, 65-67, 68-79), previously entered by him in this matter are null and void.

The controlling statutory and case law governing the issue presented by Relator are clear and unambiguous. Therefore, Judge Salvant clearly abused his

discretion when he denied Relator's plea to the jurisdiction.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Relator respectfully prays that this Court will grant this Writ and Order Respondent to acknowledge he has no subject matter jurisdiction over this matter and rescind all orders, judgments, conditions of probation, and/or other decrees previously entered therein. Relator further prays for such other and further relief as he may show himself deserving, at law and in equity.

Respectfully submitted,

/s/Wm. Reagan Wynn
WM. REAGAN WYNN
State Bar No: 00797708
KEARNEY/WYNN
One Museum Place
3100 West 7th Street, Suite 420
Ft. Worth, Texas 76107
Telephone: (817) 336-5600
Facsimile (817) 336-5610
Email: rwynn@kearneywynn.com

/s/Scott Brown
SCOTT BROWN
State Bar No: 03127100
One Museum Place
3100 West 7th Street, Suite 420
Ft. Worth, Texas 76107
Telephone: (817) 336-5600
Facsimile (817) 336-5610
Email: sb@scottbrownlawyer.com
Attorneys for Relator

CERTIFICATION

I, Scott Brown, the person filing this petition on behalf of Relator, hereby certify that I have reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

/s/Scott Brown
SCOTT BROWN

CERTIFICATE OF SERVICE

On the 17th day of March, 2017 a true copy of this Petition for Writ of Mandamus was delivered, via first class U.S. Mail, to the following:

- 1) Sharen Wilson
Tarrant County Criminal District Attorney
401 West Belknap
Fort Worth, TX 76196.
- 2) Honorable Wayne Salvant, Judge
Criminal District Court Number Two, Tarrant County
401 West Belknap
Fort Worth, TX 76196

/s/Scott Brown
Scott Brown

CERTIFICATE OF COMPLIANCE

I, Scott Brown, attorney for Relator, ETHAN ANTHONY COUCH, certify that this document was generated by a computer using Microsoft Word 2013 which indicates the word count of this document is 4,240 per Tex.R.App. 9.4(i).

/s/Scott Brown
Scott Brown

APPENDIX 1

Nos. 1450917, 1450918, 1450920 & 1450921

THE STATE OF TEXAS § IN THE CRIMINAL DISTRICT
vs. § COURT NO. 2
ETHAN ANTHONY COUCH § TARRANT COUNTY, TEXAS

ORDER


The Court has before it Probationer's Plea to the Jurisdiction in the above numbered and styled causes. After considering the record and pleadings, as well as the arguments of counsel, the Court concludes that this Court has subject matter jurisdiction over these causes.

Probationer's plea to the jurisdiction is **DENIED**.

SIGNED and **ENTERED** this the 1st day of November 2016.



HON. WAYNE SALVANT
JUDGE PRESIDING
CRIMINAL DISTRICT COURT NO. 2
TARRANT COUNTY, TEXAS

A CERTIFIED COPY
ATTEST: 9-12-12
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY:  DEPUTY



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-17-00024-CV

IN RE ETHAN ANTHONY COUCH

RELATOR

ORIGINAL PROCEEDING
TRIAL COURT NOS. 1450917, 1450918, 1450920, 1450921

MEMORANDUM OPINION¹

The court has considered relator's petition for writ of mandamus and is of the opinion that relief should be denied. Accordingly, relator's petition for writ of mandamus is denied.

PER CURIAM

PANEL: MEIER, WALKER, and PITTMAN, JJ.

DELIVERED: February 2, 2017

¹See Tex. R. App. P. 47.4.