Juvenile certification and transfer case reinstated by Court of Criminal Appeals requires immediate arrest of juvenile. [In re Bell](17-3-5)

On June 13, 2017, the Houston (1st Dist.) Court of Appeals held that, because juvenile’s conviction for aggravated robbery was reinstated by the Court of Criminal Appeals, article 44.04(b) requires that he be “immediately ... placed in custody” by the trial court.

¶ 17-3-5. **In re Bell**, No. 01-17-00373-CR, --- S.W.3d ----, 2017 WL 2545079 [Tex.App.—Houston (1st. Dist) 6/13/17].

**Facts:** Petition for writ of mandamus challenging the trial court’s issuance of alias capias and setting of no bail.

In December 2016, this Court reversed Bell’s transfer from juvenile court to criminal district court based upon Moon v. State, 451 S.W.3d 28 (Tex. Crim. App. 2014). Bell v. State, 512 S.W.3d 553, 560 (Tex. App.—Houston [1st Dist.] 2016), rev’d,– S.W.3d –, No. PD-0052-17, 2017 WL 1067892 (Tex. Crim. App. March 22, 2017). In its first ground in its petition for discretionary review to the Court of Criminal Appeals from this Court’s opinion, the State raised a jurisdictional challenge for the first time. The Court of Criminal Appeals granted the petition on this ground, vacated this Court’s judgment, and remanded the case so that the jurisdictional issue could be “fully vetted ... in the first instance.” Bell, 2017 WL 1067892, at \*1.

Bell had been released on bail while the petition was pending in the Court of Criminal Appeals. But the criminal district court issued an alias capias for Bell’s arrest shortly after the mandate issued from the Court of Criminal Appeals. Bell filed a motion in his appeal asking this Court to set bail under article 44.04(h) of the Code of Criminal Procedure and a separate motion to stay the alias capias.

However, article 44.04(h) permits this court to set bail only when a conviction is reversed and a petition has not yet been filed with the Court of Criminal Appeals. See TEX. CODE CRIM. PROC. art. 44.04(h). Moreover, under article 44.04, after conviction and pending determination of an appeal, the trial court is empowered to increase or decrease the amount of bail, either on its own motion or the motion of any party. See id. 44.04(d). Further, because our judgment has been vacated and Bell’s conviction has thus been reinstated, he may not be released on bail under the express terms of article 44.04(b) of the Code of Criminal Procedure, which provides that a defendant may not be released on bail pending the appeal from, among other things, a felony conviction for aggravated robbery, Bell’s convicted offense. See id. 44.04(b). Accordingly, we denied the motions.

Bell has now filed this petition for writ of mandamus contending that the trial court did not have jurisdiction to issue the alias capias and set no bail. Bell argues that the trial court’s actions violate Texas Rule of Appellate Procedure 25.2(g), which provides that all trial court proceedings are suspended once the record is filed in the appellate court except those permitted by law or rules:

Effect of Appeal. Once the record has been filed in the appellate court, all further proceedings in the trial court—except as provided otherwise by law or by these rules—will be suspended until the trial court receives the appellate-court mandate.

**Held:** Petition for Writ Denied.

**Opinion:** Once the record has been filed in the appellate court, all further proceedings in the trial court—except as provided otherwise by law or by these rules—will be suspended until the trial court receives the appellate-court mandate.TEX. R. APP. P. 25.2(g).

However, Bell does not address the fact that article 44.04 permits the trial court to alter bail while an appeal is pending. See TEX. CODE CRIM. PROC. art. 44.04(d). Nor does he address the fact that, because his conviction was reinstated upon issuance of the mandate from the Court of Criminal Appeals, article 44.04(b) required him to be “immediately ... placed in custody” by the trial court. See TEX. CODE CRIM. PROC. art. 44.04(b) (defendant convicted of felony aggravated robbery may not be released on bail pending appeal and must be taken into custody). In short, there is no support for Bell’s claim that the trial court’s actions violated Rule 25.2(g).

**Conclusion:** We deny the petition for writ of mandamus. Any pending motions are dismissed as moot.