

NO. 14-24-00882-CR

**IN THE COURT OF APPEALS
FOR THE FOURTEENTH JUDICIAL
DISTRICT OF TEXAS
HOUSTON, TEXAS**

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EX PARTE KYLE PRASAD GEORGE, Appellant

**On Appeal from County Court at Law Number 5
Fort Bend County, Texas
Trial Court Cause No. 24-CCR-241836**

APPELLANT'S BRIEF

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ORAL ARGUMENT IS REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Texas Rule of Appellate Procedure 39.7, Appellant believes that oral argument would help to clarify these important legal issues.

STATEMENT OF THE CASE

Appellant was indicted for the Class A misdemeanor offense of Misrepresentation of Identity on September 26, 2024. CR 5. Appellant thereafter filed an Application for Pretrial Writ of Habeas Corpus and/or First Motion to Quash and Dismiss the Indictment as Prosecution Improperly Brought. CR 22-37. Appellant argued in his pretrial writ that his due process rights were violated when the prosecutor sought and obtained an indictment against him for an alleged violation of the Election Code without a referral from the Texas Ethics Commission, the trial court lacked subject matter jurisdiction over the indictment, and that as a result the indictment was void and should be dismissed. *Id.* Following a hearing, the trial court “dismissed the pretrial writ of habeas corpus and deny the relief requested” in Appellant’s Writ of Habeas Corpus. CR 114; 2 RR 40.

Notice of Appeal was filed on November 14, 2024. CR 115.

This brief follows.

ISSUES PRESENTED

Without a referral by the Texas Ethics Commission (TEC), the prosecutor did not have authority to prosecute an alleged violation of Election Code, Title 15, and Government Code, Chapter 572, and the trial court lacked subject matter jurisdiction, because the Texas Constitution and Government code specifically state that the TEC “shall administer and enforce” the statutes allegedly violated by Appellant.

The trial court erred by denying Appellant’s pretrial writ of habeas corpus because the trial court lacked subject matter jurisdiction and the prosecutor’s failure to afford Appellant the due process provided by the Texas Constitution, by statute, and Article 1, section 19 due course of law violated his substantial rights.

STATEMENT OF FACTS

In October 2023, the Fort Bend County District Attorney (FBCDA) received a sworn complaint regarding an individual named Taral Vipul Patel who at the time was a political candidate for Fort Bend County Commissioner — Precinct 3. CR 35. In response, both the FBCDA and the Texas Rangers conducted a joint investigation into this complaint. *Id.* As a result of this investigation, Mr. Patel was indicted for the felony offense of Misrepresentation of Identity — an alleged violation of Texas Election Code section 255.005. *Id.*

Nearly one year later, on September 24, 2024, the Fort Bend County District Attorney sent a complaint to the Texas Ethics Commission (TEC). *Id.* Appellant is the subject of this particular complaint. In this complaint to the TEC, the FBCDA referred to its investigation and prosecution of Taral Vipul Patel for the misdemeanor offense of Misrepresentation of Identity, and alleged that Appellant

“may have participated in the commission of the offense in a manner that exposes him to criminal liability as a party.” *Id.*

On September 26, 2024 — two days after making this complaint about Appellant to the TEC — the prosecutor presented the same allegation to a grand jury for indictment, and a true bill of indictment was returned against Appellant. CR 5.

On October 1, 2024, the TEC sent written notice of this complaint to Appellant. CR 36-7. In this Notice of Complaint, the TEC confirmed receipt of a complaint against Appellant, provided written notice of the allegation, and noted that the TEC “accepts jurisdiction over the allegation.” *Id.* The Notice further described the next phase of the process in which Appellant was allowed 25 business days from the date he received the notice to respond to the allegation. *Id.* The Notice confirmed that at this early stage in the process, the complaint and all associated documents must remain confidential. *Id.*

On October 4, 2024, Appellant filed an Application for Pretrial Writ of Habeas Corpus and/or First Motion to Quash and Dismiss the Indictment as Prosecution Improperly Brought. CR 22-37. Appellant argued that his due process rights were violated when the FBCDA sought and obtained an indictment against him for an alleged violation of the Election Code without a referral from the TEC, and that as a result the indictment was void and should be dismissed. *Id.* A hearing was scheduled for October 21, 2025. 2 RR 5.

Then, on October 8, 2024, the TEC issued an order referring this allegation — for which it received a complaint 14 days earlier — against Appellant to the prosecuting attorney. CR 67. TEC issued this particular referral before Appellant had the complete opportunity to answer the allegation or participate in the preliminary review process, preliminary hearing, or formal hearing.

On October 21, 2025, the trial court held a hearing on Appellant’s writ of habeas corpus. 2 RR 5. The prosecutor argued that because they now have a referral from TEC in hand, the issue is moot. 2 RR 15-7. The prosecutor further argued that the decision in *Ex parte Charette*¹, upon which Appellant relied in part, was not final as mandate had not yet issued and the State Prosecuting Attorney had filed a motion of rehearing which had yet to be ruled on. 2 RR 17-20. Appellant argued that the indictment was void because the prosecutor did not have a TEC referral when it sought a true bill of indictment from the grand jury. 2 RR 13. Appellant also argued that the writ is not moot because he was not afforded any of the due process required by the Texas Constitution and the relevant statutory framework. 2 RR 14-5. In addition to arguing that the decision in *Charette* was authoritative, Appellant argued that the reasoning in the decision was sound, had basis in constitutional and statutory law, and should lead the trial court to dismiss the indictment. *Id.* In the end, by written order, the trial court “dismissed the

¹ 2024 WL 4138710 (Tex. Crim. App. Sept. 11, 2024), reh'g granted (Jan. 15, 2025).

pretrial writ of habeas corpus and deny the relief requested” by Appellant. CR 114; 2 RR 40. Appellant thereafter gave written notice of appeal. CR 115.

On January 15, 2025, several months after the hearing, the Court of Criminal Appeals granted the State Prosecuting Attorney’s motion for rehearing in *Ex parte Charette*. See *Exhibit A*. In its order, the Court ordered additional briefing and noted that oral argument will be permitted. *Id.*

SUMMARY OF THE ARGUMENT

The Texas Ethics Commission is a constitutionally created agency charged with administering and enforcing numerous election code and government code provisions. Most of these statutes are criminal offenses. Because the statutes governing the TEC establish a “pervasive regulatory scheme” which demonstrates that the Legislature intended for the TEC to have exclusive jurisdiction over these provisions, the trial court lacks subject matter jurisdiction over these offenses unless and until the TEC has made a final determination on the allegations.

This matter is cognizable in a pretrial habeas proceeding because the trial court’s power to proceed is at issue since Appellant is statutorily and constitutionally entitled to the exhaustion of administrative remedies in the TEC before any prosecution for these offense can occur. Further, forcing him to wait until after trial to complain about this due process violation would wholly undermine his right to this process.

The indictment in this case was obtained 2 days after an initial sworn complaint was sent to the TEC. The prosecutor did not possess a referral from the TEC when she obtained the indictment against Appellant. Therefore, Appellant was denied the right to this constitutionally and statutorily mandated process, and the trial court lacks subject matter jurisdiction. The prosecutor was not authorized to represent the government in the trial court where the trial court lacked subject matter jurisdiction.

The Appellant's due process rights were violated in that he was denied a meaningful opportunity to be heard and participate in the administrative process in a meaningful manner. Appellant's protected liberty interest in the mandatory pretrial administrative process was violated when he was indicted without having the benefit of any of the required procedural process prior to indictment.

This complaint is not moot despite the prosecutor obtaining a TEC referral post-indictment. By obtaining the indictment 2 days after making the initial complaint to the TEC, and without a TEC referral, the prosecutor did not comply with the constitutionally and statutorily mandated process for this election code offense. As a result, Appellant was robbed of the constitutionally and statutorily mandated process, and the only proper remedy is dismissal of the indictment. There continues to be an actual controversy between the parties because, contrary to the prosecutors argument, Appellant was not afforded the process to which he was entitled. At this point, he can never be afforded that mandatory process. For

these reasons, the trial court must be reversed, the writ must be granted, and the indictment must be dismissed.

ARGUMENT AND AUTHORITIES

Note on *Ex parte Charette*

In his Application for Pretrial Writ of Habeas Corpus and/or First Motion to Quash and Dismiss the Indictment as Prosecution Improperly Brought and his arguments at the hearing, Appellant relied on the *Charette* majority opinion. However, Appellant also relied on the majority opinion's legal reasoning, constitutional and statutory law, and the application of the facts to the relevant laws. Although the *Charette* majority opinion itself cannot be relied on as authority now that rehearing has been granted, the constitutional principles and statutory framework have existed for years and remain in place. Appellant believes — and argues in his Brief — that the indictment is void, the prosecution was unauthorized, and the trial court lacked subject matter jurisdiction because the prosecutor failed to comply with applicable Texas constitutional and statutory procedure which requires a TEC referral before a prosecutor can obtain an indictment — thus irreparably violating his right to due process and due course of law.

1. Appellant's challenge is cognizable in a pretrial habeas proceeding.

Appellant's claim gives rise to a cognizable basis for pretrial habeas relief because his claim implicates the trial court's jurisdiction over this offense and Appellant's right to avoid trial in the absence of prior TEC proceedings.

Applicable Law

Pretrial habeas, followed by an interlocutory appeal, is an extraordinary remedy that is available only in limited circumstances. *Ex parte Vieira*, 676 S.W.3d 654, 657 (Tex. Crim. App. 2023); *Ex parte Smith*, 178 S.W.3d 797, 801 (Tex. Crim. App. 2005). This remedy is reserved for “ ‘situations in which the protection of the applicant's substantive rights or the conservation of judicial resources would be better served by interlocutory review.’ ” *Ex parte Ingram*, 533 S.W.3d 887, 891 (Tex. Crim. App. 2017) (quoting *Ex parte Weise*, 55 S.W.3d 617, 620 (Tex. Crim. App. 2001)). The remedy is not available “when the question presented, even if resolved in the defendant's favor, would not result in immediate release.” *Id.* In other words, “[i]f the relief sought would not prevent prosecution, pretrial habeas is unavailable.” *Ex parte Couch*, 678 S.W.3d 1, 4 (Tex. Crim. App. 2023). One recognized exception to this rule, however, is when the right at issue includes a right to avoid trial, such as the constitutional protection against double jeopardy. *Ingram*, 533 S.W.3d at 892.

In *Ex parte Smith*, the Court of Criminal Appeals (CCA) identified three circumstances in which a defendant may pursue a pretrial writ of habeas corpus: (1) challenges to the State's power to restrain the defendant; (2) challenges to the manner of pretrial restraint (i.e. denial of bail or conditions of bail); or (3) “issues which, if meritorious, would bar prosecution or conviction.” *Smith*, 178 S.W.3d at 801. Addressing the last of these categories in *Ex parte Couch*, the CCA explained

that those types of issues result in the trial court being “deprived of the power to proceed.” *Couch*, 678 S.W.3d at 7; *see also Weise*, 55 S.W.3d at 619 (stating that cognizability of pretrial claim may depend on “whether the alleged defect would bring into question the trial court's power to proceed”). The CCA has also recognized that certain claims are cognizable in a pretrial writ of habeas corpus based on the nature of the underlying rights—that is, where the rights at issue “would be effectively undermined if not vindicated before trial.” *Ex parte Perry*, 483 S.W.3d 884, 895 (Tex. Crim. App. 2016); *see Ex parte Sheffield*, 685 S.W.3d 86, 94 (Tex. Crim. App. 2023).

Argument

Appellant is under restraint by virtue of the indictment and by the bond and bond conditions set by the trial court. CR 5-17. Chapter 571 of the Government Code defines the TEC’s authority and procedures for processing a sworn complaint that alleges an election code violation. The statutory framework provides that criminal prosecution for certain specified election code offense can be initiated only after certain statutory requirements have been met — including the requirement of a vote by the Commissioners to “refer matters to the appropriate prosecuting attorney for criminal prosecution.” TEX. GOV’T CODE § 571.171(a). Thus, as detailed below, Appellant is statutorily and constitutionally entitled to the exhaustion of administrative remedies in the TEC before any criminal prosecution for these offenses can occur. *See Subaru of American Inc., v. David McDavid*

Nissan, 84 S.W.3d 212, 221 (Tex. 2002). Appellant argues that unless these administrative remedies are exhausted before the matter is referred to the prosecuting attorney, the trial court lacks subject matter jurisdiction and must dismiss this indictment. As such, Appellant challenges the trial court's "power to proceed" which falls squarely under the third circumstance in which a defendant may pursue a pretrial writ of habeas corpus. *See Smith*, 178 S.W.3d at 801. *See Couch*, 678 S.W.3d at 7. Additionally, were Appellant forced to wait until after the trial to complain about this due process violation, his right to this process would be "wholly undermined." Finally, were Appellant put to trial on this indictment without the opportunity for a hearing and possible resolution of this allegation in the TEC, then he would irreparably lose out on the opportunity to avoid criminal charges by possibly avoiding an affirmative vote by the TEC on whether the matter should be referred for prosecution.

2. The TEC has exclusive jurisdiction to make an initial determination in this complaint.

Although not explicitly stated, the "pervasive legislative scheme" and the relevant constitutional provisions show that the TEC does in fact have exclusive jurisdiction over this complaint. Therefore, unless and until all administrative remedies are exhausted, the trial court does not have subject matter jurisdiction over this allegation.

Applicable Law

The Texas Constitution states that a county court at law has jurisdiction “as provided by law.” TEX. CONST. ART. V, § 16. Referring to the TEC, section 24(d) provides that the “commission has the powers and duties provided by law.” TEX. CONST. ART. V, § 24(d).

The Texas Supreme Court described the exclusive jurisdiction doctrine as follows: “when the Legislature grants an administrative body the sole authority to make an initial determination in a dispute, the agency has exclusive jurisdiction over the dispute.” *Thomas v. Long*, 207 S.W.3d 334, 340 (Tex. 2006); *David McDavid Nissan*, 84 S.W.3d at 221. In *David McDavid Nissan*, the Supreme Court noted that an administrative agency has exclusive jurisdiction where a “pervasive regulatory scheme” reveals legislative intent that the regulatory process “be the exclusive means of remedying the problem to which the regulation is addressed.” *David McDavid Nissan*, 84 S.W.3d at 221.

Generally, under the exclusive jurisdiction doctrine, all administrative remedies must be exhausted before a party may seek judicial review of the agency's action. *Id.*; see also *In re Entergy Corp.*, 142 S.W.3d 316, 321 (Tex. 2004) (citing *Cash Am. Int'l, Inc. v. Bennett*, 35 S.W.3d 12, 15 (Tex. 2000)). Prior to exhaustion of all administrative remedies, the trial court does not have subject matter jurisdiction. The Supreme Court wrote in *Entergy Corp.*, “until the party has exhausted all administrative remedies, the trial court lacks subject matter

jurisdiction and must dismiss any claim within the agency's exclusive jurisdiction.” *Entergy Corp.*, 142 S.W.3d at 321-22 (citing *David McDavid Nissan*, 84 S.W.3d at 221).

Some statutes expressly specify that an agency has “original jurisdiction” or “exclusive jurisdiction” over certain matters. Some statutes do not. The Texas Supreme Court has held that several state agencies have exclusive jurisdiction over specific matters even in the absence of an express statement to that effect. *See e.g. Thomas v. Long*, 207 S.W.3d 334 (finding that an agency had exclusive jurisdiction and the trial court lacked subject matter jurisdiction over the dispute despite no express legislative indication of exclusive jurisdiction).

To determine whether an agency has “exclusive jurisdiction,” courts should examine the overall statutory scheme to decide whether the Legislature intended for an administrative agency to have sole authority to make an initial determination in a particular dispute. *David McDavid Nissan*, 84 S.W.3d at 221; *Long*, 207 S.W.3d at 340. An administrative agency should be allowed “to initially decide an issue when: (1) an agency is typically staffed with experts trained in handling the complex problems in the agency's purview; and (2) great benefit is derived from an agency's uniformly interpreting its laws, rules, and regulations, whereas courts and juries may reach different results under similar fact situations.” *David McDavid Nissan*, 84 S.W.3d at 221.

Argument

The question is whether or not a prosecutor must make a sworn complaint to the TEC so that the TEC can initiate its constitutionally and statutorily mandated process. The answer is yes — because the TEC has exclusive jurisdiction to make an initial determination over exactly this type of allegation. Together, in this section and the following section, Appellant cites to the relevant constitutional and statutory provisions, and argues why.

Even though Fort Bend County Courts at Law generally have jurisdiction over Class A misdemeanor offenses, the Texas Constitution makes clear that a county court at law's jurisdiction is provided for by law. *See* TEX. CONST. ART. V, § 16. Therefore, “the law” may establish jurisdiction that would otherwise exist in a county court at law in a different entity, such as an administrative agency like the TEC. That is exactly what the Legislature did, and the statutory scheme aligns with the constitutional provisions that establish both the TEC and the jurisdiction of county courts at law.

The Texas Constitution and the legislative intent behind the various statutes reveals that the TEC has the authority to make an initial determination. The TEC has the **sole** authority to make an initial determination about this dispute because that is what the legislative scheme demands. Specifically, the TEC has exclusive jurisdiction on account of the “pervasive regulatory scheme” which indicates the legislative intent that the TEC process be the “exclusive means of remedying the

problem to which the regulation is addressed.” *See David McDavid Nissan*, 84 S.W.3d at 221. As this Court evaluates the overall statutory scheme, which is examined in more detail in the following section, this court should conclude that the statutes that create and govern the TEC, the purpose of the TEC, the fact that the TEC enforces and administers only election-related and public-service matters, along with the statutorily-authorized rules and regulations adopted by the TEC, all show that the Legislature intended the TEC to have exclusive jurisdiction over the election code crime at issue in this case.

3. Because the TEC has exclusive jurisdiction to make an initial determination regarding this alleged violation, the indictment must be dismissed as there was no referral from the TEC to the prosecutor as required by law prior to the presentation and true bill of indictment.

Under these circumstances, the trial court lacked subject matter jurisdiction to hear this case. The exclusive jurisdiction doctrine permits the Legislature to decide that an administrative agency alone has authority to make an initial determination in a dispute. The legislature gave the TEC exclusive jurisdiction to conduct an initial review of Appellant’s alleged election code violation. Yet, the TEC had not afforded any of the constitutionally and statutorily mandated process to Appellant — let alone voted to refer the matter to the prosecuting attorney — when the prosecutor obtained the indictment. Therefore, the trial court lacks subject matter jurisdiction to hear this case. This makes the indictment void at its inception.

Standard of Review

An applicant for writ of habeas corpus bears the burden of proving his allegations by a preponderance of the evidence. *Ex parte Legrand*, 291 S.W.3d 31, 35 (Tex. App.—Houston [14th Dist.] 2009, pet. ref'd). A trial court's ruling on a pretrial application for a writ of habeas corpus should be reviewed for abuse of discretion — viewing the facts in the light most favorable to the ruling. *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006); *Ex parte Gonzalez*, 525 S.W.3d 342, 346 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Thus, this Court should defer to the trial court's application of law to fact questions if resolution of those questions depends upon an evaluation of credibility and demeanor. *Id.* at 36. However, if the outcome of those ultimate questions turns upon application of legal standards, this Court should review *de novo* the court's determinations. *Id.*

Applicable Law

The Texas Constitution established the TEC in section 24(a) of Article III. Section 24(a) established the TEC as a non-partisan state agency with commission members appointed by the Governor from lists composed by members of each political party. TEX. CONST. ART. III § 24(a).

In chapter 571 of the Government Code, the Legislature codified the organization and duties of the TEC. Government Code Section 571.061 states that the TEC has authority for oversight of certain sections of the code:

Sec. 571.061. LAWS ADMINISTERED AND ENFORCED BY
COMMISSION.

(a) The commission shall administer and enforce:

- (1) Chapters 302, 303, 305, 572, and 2004;
- (2) Subchapter C, Chapter 159, Local Government Code, in connection with a county judicial officer, as defined by Section 159.051, Local Government Code, who elects to file a financial statement with the commission;
- (3) Title 15, Election Code; and
- (4) Sections 2152.064 and 2155.003.

(b) The commission shall perform any other powers or duties given to the commission under a law listed in Subsection (a).

TEX. GOV'T CODE § 571.061.

Argument

The indictment in the instant case falls squarely within the investigative and enforcement authority of the TEC: Texas Election Code 255.005(a) is contained in Title 15, Election Code which is the code section Appellant allegedly violated. Thus, per the Texas Constitution and the relevant statutory law, Appellant is entitled to the full and complete TEC process, which can end in a criminal referral to the prosecuting attorney. However, in this case, a full and complete TEC process was not afforded to Appellant prior to indictment. Therefore, this indictment must be dismissed.

Together, the Government Code and TEC regulations articulate the administrative review process which includes a preliminary review, informal review, formal review, and, possibly, referral. Upon receipt of a sworn complaint, the TEC must initiate a preliminary review process. TEX. GOV'T CODE §§ 571.124-.1244. A person subject to a complaint — the respondent — is entitled to notice of the complaint and an opportunity to respond. *Id.* If they do not reach an agreed resolution, the parties are entitled to a preliminary hearing. TEX. GOV'T CODE § 571.125.

Here, Appellant received a notice of complaint which provided written notice of the allegation, and stated that the TEC “accepts jurisdiction over the allegation.” CR 36-7. Additionally, the Notice of Complaint stated that Appellant was allowed 25 business days from the date he received the notice to respond to the allegation. *Id.* For the sake of argument, using the date the notice was drafted by the TEC (October 1, 2024) since the record does not reflect the actual date that the notice was received, Appellant had until November 12, 2024 to respond (the correct date is November 14, 2024 if the Veteran’s Day and Columbus Day holidays are excluded from the 25 business days allowed for Appellant’s response). Yet, on October 8, 2024 — a mere 7 days from the date of the notice of complaint and, more likely, only 4 or 5 days after the notice of complaint was actually received — this matter was somehow referred to the prosecuting attorney for criminal charges. CR 67. But not before indictment — meaning that the trial court

does not have subject matter jurisdiction as the administrative remedies were not first exhausted. *See In re Entergy Corp.*, 142 S.W.3d at 321.

Appellant was denied the opportunity to respond. Appellant was denied the preliminary review process in which he was entitled to an opportunity to discuss and possibly resolve this matter with bipartisan commission members. Appellant was denied a preliminary hearing in which he was due the ability to present arguments and evidence, and possibly reach an agreed resolution.

Following a preliminary hearing, the Government Code and TEC regulations next provide for a formal hearing. The Administrative Procedure Act, section 2001.001 et seq. and Government Code chapter 571 set out the rights and rules implicated in a formal hearing. TEX. GOV'T CODE § 571.129-571.132.

Just like he was not afforded a preliminary hearing, Appellant was denied a formal hearing.

Finally, the Government Code and TEC regulations provide for the possibility of a criminal referral upon the vote of the members of the Commission.

The Government Code provides the following:

- Sec. 571.171. INITIATION AND REFERRAL. (a) On a motion adopted by an affirmative vote of at least six commission members, the commission may initiate civil enforcement actions and refer matters to the appropriate prosecuting attorney for criminal prosecution.
- (b) On receipt of a sworn complaint, if the executive director reasonably believes that the person who is the subject of the complaint has violated Chapter 36 or 39, Penal Code, the executive director may refer the matter to the appropriate prosecuting attorney for criminal prosecution.

- (c) In making a referral to a prosecuting attorney under this section, the commission or executive director may disclose confidential information.

TEX. GOV'T CODE § 571.171.

The TEC, in this particular case, somehow moved directly from receipt of a sworn complaint to a referral to the prosecuting attorney — all within the initial time period allowing for Appellant's response to the complaint. This referral was made abruptly and without regard to any of the constitutionally and statutorily mandated process. Yet, importantly, only the complaint existed prior to the prosecutor obtaining an indictment for the same allegation. Thus, the indictment in the instant case did not lawfully vest the trial court with subject matter jurisdiction because the prosecutor did not first obtain a referral from the TEC.

Government Code section 571.075 makes clear that the commission cannot delegate “any power requiring a vote of the commission.” A referral to the prosecuting attorney requires an affirmative vote of at least 6 commission members. TEX. GOV'T CODE § 571.171(a). This means that the Legislature intended for the TEC to make an initial determination regarding a criminal referral. Yet, here, the prosecutor did not possess a TEC referral when she obtained an indictment for this allegation.

4. The indictment must be dismissed because the lack of referral violated Appellant's due process rights and Appellant was denied due course of law under article I, sections 13 and 19 of the Texas Constitution.

The prosecutor's decision to obtain an indictment prior to receiving a TEC referral violated Appellant's substantial rights to participate in and avail himself of the administrative remedies available under the TEC statutory authority which was in violation of the Texas Constitution article 1, sections 13 and 19.

Applicable Law

Article 1, section 13 of the Texas Constitution reads as follows:

EXCESSIVE BAIL OR FINES; CRUEL OR UNUSUAL PUNISHMENT; OPEN COURTS; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

TEX. CONST. ART. 1, § 13.

The Due Process clause of the Texas Constitution, provides:

DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

TEX. CONST. ART. 1, § 19.

Texas courts have held that the due course of law clause does not provide any greater protection than the federal due process clause. *State v. Vasquez*, 230 S.W.3d 744 (Tex. App.—Houston [14th Dist.] 2007, no pet.). This question may be

evaluated under federal law. *Manns v. State*, 122 S.W.3d 171 (Tex. Crim. App. 2003). Due process requires that a person who may be deprived of a liberty interest be provided notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Anthony v. State*, 209 S.W.3d 296 (Tex. App.—Texarkana 2006) citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Univ. of Tex. Med. Sch. v. Than*, 901 S.W.2d 926, 930 (Tex. 1995); *Zinerman v. Burch*, 494 U.S. 113, 127 (1990); *Perry v. Del Rio*, 67 S.W.3d 85, 92 (Tex. 2001).

Argument

Appellant had a protected liberty interest in the mandatory pretrial administrative process. Generally, following a complaint to the TEC about an alleged offense for which the TEC has jurisdiction, the subject of the complaint has numerous opportunities to be heard in a meaningful manner. Specifically, a party to a complaint has the opportunity to receive detailed notice of the complaint, the opportunity to respond; the opportunity for an informal hearing and a formal hearing; the safeguard that a criminal referral may not occur without a vote of at least 6 members of the commission; presentation of the allegation to a grand jury; and the ability to answer and defend the allegation in a civil or criminal proceeding. Thus, Appellant's liberty interest was implicated because he was indicted without having the benefit of any of the required procedural process prior to indictment.

Because Appellant did not have the opportunity for a meaningful preliminary review, informal or formal hearing with TEC, prior to indictment, Appellant had no opportunity to explain or cure this issue, and now Appellant cannot raise any of the available defenses in this prosecution. Appellant's right to due process was violated.

5. Appellant's claims for relief are not moot.

The TEC holds the authority to make an initial determination regarding complaints within its jurisdiction. This process is constitutionally and statutorily established and mandated. Appellant's claims are not moot simply because the prosecutor ignored this essential step, obtained an indictment, and then somehow obtained a referral in the middle of the time period allotted for Appellant's initial response to the complaint.

Applicable Law

"The longstanding rule in Texas regarding habeas corpus is that where the premise of a habeas corpus application is destroyed by subsequent developments, the legal issues raised thereunder are moot." *Bennet v. State*, 818 S.W.2d 199, 200 (Tex. App.—Houston [14th Dist.] 1991, no pet.).

The mootness doctrine limits courts to deciding cases in which an actual controversy exists. *Ex parte Flores*, 130 S.W.3d 100, 104–05 (Tex. App.—El Paso 2003, pet. refd). When there has ceased to be a controversy between the litigating parties, which is due to events occurring after judgment has been rendered by the

trial court, the decision of an appellate court would be a mere academic exercise and the court may not decide the appeal. *Id.* A case that is moot is normally not justiciable. *Pharris v. State*, 165 S.W.3d 681, 687–88 (Tex. Crim. App. 2005).

An issue becomes moot when the court cannot grant effectual relief. *Chacon v. State*, 745 S.W.2d 377, 378 (Tex. Crim. App. 1988).

Argument

The prosecutor argues that because he eventually obtained a TEC referral, the issues raised in Appellant’s pretrial writ are moot. 2 RR 15-6. The argument is that Appellant complained about the administrative process, but the process has now taken place. *Id.* The prosecutor argued to the trial court that even though he did not possess a referral at the time of indictment, he now has a referral in hand, and therefore the trial court has subject matter jurisdiction and an indictment that she can rule upon and hear in trial. 2 RR 16.

The prosecutor argues that Appellant’s claims are moot just like a defendant who complains that his right to a speedy trial has been denied. 2 RR 16. Specifically, the prosecutor argued that once a defendant who complains he is being denied a speedy trial is actually put to trial, the complaint becomes moot. *Id.* However, if we are looking for an analogous case in the world of speedy trial violations, the instant case is more like a situation in which a defendant’s right to speedy trial has been irreparably violated such that the only fair and appropriate remedy is dismissal of the case. *See Barker v. Wingo*, 407 U.S. 514 (1972);

Doggett v. U.S., 505 U.S. 647 (1992). Not every claim that a defendant has been denied the right to a speedy trial can be cured by simply putting that defendant to trial. Similarly, a post-indictment TEC referral does not vest the trial court with subject matter jurisdiction nor does it bring to life this void indictment. Here, Appellant has been robbed of the constitutionally and statutorily mandated process, and the only remedy is dismissal of the indictment.

Another analogy presented by the prosecutor is that of a defendant who moves the trial court for an examining trial following a complaint that he is confined without indictment. Once the case is indicted, the argument goes, his request for an examining trial is moot, and that defendant can be put to trial. This is another bad analogy. The instant case is more akin to a situation in which a defendant is put to trial without a valid indictment. This fundamental error cannot be cured if a proper indictment is returned on the second day of testimony. Just the same, the indictment in this case is not saved by a subsequent TEC referral.

Had this case been dismissed after the writ hearing, Appellant's complaints might be moot. *See Ex parte Sewell*, 495 S.W.3d 54, 56 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (if the State dismissed the criminal charges against him, a party's complaint about the constitutionality of a statute becomes moot.). On the contrary, this indictment is pending and proceeding to trial.

Appellant's complaint is not moot because — despite the rushed criminal referral — Appellant did not get the benefit of the process prior to a criminal

referral and charging decision as required by the Texas Constitution and relevant statutory law. Appellant's complaint is not moot because an actual controversy still exists. Specifically, Appellant complains that he was denied the opportunity to participate in the administrative process that is required by the Texas Constitution and relevant statutes prior to a criminal referral and charging decision. The subsequent TEC referral does not "destroy" Appellant's claims in his Pretrial Writ. *See Bennet v. State*, 818 S.W.2d at 200. Because the prosecutor did not first obtain a TEC referral before seeking an indictment for this allegation, the trial court lacks subject matter jurisdiction. Thus, the court absolutely can grant "effectual relief." *See Chacon*, 745 S.W.2d at 378. Because Appellant was denied the constitutionally required process and the trial court lacks subject matter jurisdiction, this indictment must be dismissed, and the trial court erred when it denied relief. Thus, as Appellant was denied constitutionally and statutorily mandated process, and as a result the trial court lacks subject matter jurisdiction, a controversy continues to exist, and Appellant's complaints are not a mere academic exercise. *See Ex parte Flores*, 130 S.W.3d at 104–05. For all of these reasons, Appellant's complaints are not moot.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Appellant prays that this Court reverse the trial court's order denying relief, grant the relief requested, dismiss the indictment in this matter, and grant any other relief that may be appropriate.

Respectfully submitted,

/s/ Daniel Lazarine

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CERTIFICATE OF SERVICE

This is to certify that on January 31, 2025, a true and correct copy of the above and foregoing Appellant's Brief was served on the Fort Bend County District Attorney's Office by electronic service through e-filing.

/s/ Daniel Lazarine
DANIEL LAZARINE

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4(1)(i)(1), I certify that this document complies with the type-volume limitations of TEX. R. APP. P. 9.4(i)(2)(D):

1. Exclusive of the exempted portions set out in TEX. R. APP. P. 9.4(i)(1), this document contains 5,849 words.

2. This document was prepared in proportionally spaced typeface using Times New Roman 14 for text.

/s/ Daniel Lazarine
DANIEL LAZARINE



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NOS. PD-0522-21, PD-0523-21,
PD-0524-21, & PD-0525-21

EX PARTE ROBBIE GAIL CHARETTE, Appellant

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTEENTH COURT OF APPEALS
WASHINGTON COUNTY

Per curiam.

ORDER

The Court grants the State's motion for rehearing.

The State's brief is due within thirty days of the date of this order. Appellant's brief is due thirty days after the timely filing of State's brief. Oral argument will be permitted.

The Clerk of this Court will send copies of this order to the Court of Appeals for the Fourteenth District, the State Prosecuting Attorney, the District Attorney for Washington County, and Appellant.

CHARETTE, PD-0522-21 – 2

IT IS SO ORDERED this the day of 15th day of January, 2025.

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