

CHAPTER 440

S.B. No. 1292

An Act relating to habeas corpus appeals and discretionary review in cases involving extradition or the setting or reduction of bail; amending Article 44.38, Code of Criminal Procedure, 1965, as amended.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 44.38, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

“Article 44.38. Judgment Conclusive. (a) The judgment of the Court of Appeals in appeals under habeas corpus shall be final and conclusive if discretionary review is not granted by the Court of Criminal Appeals. If discretionary review is granted, the judgment of the Court of Criminal Appeals under habeas corpus shall be final and conclusive. In either case, no further application in the same case can be made for the writ, except in cases specially provided for by law.

“(b) Notwithstanding any other provision of this code, where on appeal in a habeas corpus proceeding, the Court of Appeals has:

“(1) affirmed the judgment of a trial court in an extradition proceeding and has, in effect, approved the extradition of the appellant; or

“(2) reversed the judgment of a trial court in a proceeding in which the issue was whether bail should be granted or whether the amount of bail should be reduced and has, in effect, either granted bail or reduced the amount of bail; the Court of Appeals shall enter judgment on the date of and in conformity with its opinion. In such cases, no motion for rehearing shall be permitted, and the judgment shall become final at the end of business on the 10th day after entry of judgment, on which date the mandate will issue, subject to the provisions of Subsection (c) of this article.

“(c) The losing party on appeal in any case mentioned in Subsection (b) of this article may file a petition for discretionary review with the clerk of the Court of Appeals. Such petition must be filed before the 10th day following entry of judgment of the Court of Appeals, and neither prevents the judgment of the Court of Appeals from becoming final nor does it prevent the mandate from issuing. Provided, however, that, upon a finding that a substantial question is presented which is in need of resolution by the Court of Criminal Appeals, a judge of that court may enter an order which defers the finality of the Court of Appeals’ judgment and stays the issuance of or withdraws the mandate for a period not exceeding 45 days. On the expiration of the period set in the order, the Court of Appeals’ judgment becomes final and its mandate shall issue, unless the Court of Criminal Appeals has granted discretionary review. If discretionary review is granted by the court, the applicable provisions of Article 44.45 of this code shall apply and the judgment of the Court of Appeals shall not become final nor shall its mandate issue, except as otherwise provided by law. If the Court of Criminal Appeals refuses the petition, the judgment of the Court of Appeals becomes final the day after the refusal and the mandate shall issue. If the Court of Criminal Appeals does not act on the petition within the time permitted by this subsection, the petition shall be deemed overruled by operation of law on the expiration of such time.

“(d) The provisions of Subsections (b) and (c) of this article apply to an appeal under Article 44.04 of this code, if the decision of the Court of Appeals has the effect of granting or reducing bail.

“(e) The provisions of Subsections (b), (c), and (d) of this article do not apply in any case where an extradition order is reversed or where an order denying or refusing to reduce bail is affirmed by a court of appeals. The finality of judgments, issuance of mandates, and procedure for discretionary review in such cases shall be as elsewhere provided in this code.”

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 2, 1985, by the following vote: Yeas 31, Nays 0; passed the House on May 17, 1985, by the following vote: Yeas 134, Nays 0, one present not voting.

Approved: June 11, 1985

Effective: Immediately