

Dismissed and Opinion filed March 30, 2000.



In The

Fourteenth Court of Appeals

NO. 14-00-00224-CR

THOMAS ALBERT PALMER, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 773316**

OPINION

After a guilty plea, appellant was convicted of the offense of driving while intoxicated and sentenced to 2 years probation, a \$500 fine, and 100 hours of community service on April 22, 1998. On September 29, 1999, the State filed a motion to revoke probation. The trial judge did not revoke probation, but signed an order on November 5, 1999, amending the conditions of probation. Appellant is appealing from the November 5, 1999, order amending the conditions of probation.

Ordinarily, an order modifying probation is not subject to appeal. *See Basaldua v. State*, 558 S.W.2d 2, 5 (Tex. Crim. App. 1977). In *Basaldua*, the court noted that the statute governing probation

allows appeal only from a court's revocation of probation. *See id.* To complain of an error in the modification of probation, a defendant must file a writ of habeas corpus. *See id.* Case law has allowed complaints about a modification order on appeal only when violation of the modified order forms the basis of a subsequent revocation. *See Elizondo v. State*, 966 S.W.2d 671, 672 (Tex. App.–San Antonio 1998, no pet.). Because this is an appeal from a modification of the conditions of probation, and not from a revocation of probation, we find that the order is not appealable.

Appellant was notified that this court would consider dismissal for want of jurisdiction on March 28, 2000. Appellant filed a request to retain the case on the docket, but this request does not supply grounds for concluding that this court has jurisdiction over the appeal.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed on March 30, 2000.

Panel consists of Justices Yates, Fowler and Edelman.

Do Not Publish — *See* TEX. R. APP. P. 47.3(b).