



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

SOLOMON BYRD,	§	No. 08-17-00170-CR
	§	
Appellant,	§	Appeal from the
	§	
v.	§	168th District Court
	§	
THE STATE OF TEXAS,	§	of El Paso County, Texas
	§	
Appellee.	§	(TC# 20160D03357)
	§	

MEMORANDUM OPINION

Solomon Byrd is attempting to appeal his conviction of burglary of a habitation. Finding that Appellant did not timely file his notice of appeal, the appeal is dismissed for lack of jurisdiction.

A timely notice of appeal is necessary to invoke this Court's jurisdiction. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex.Crim.App. 1996). In a criminal case, a defendant's notice of appeal is due within thirty days after the sentence is imposed in open court or the trial court enters an appealable order. *See* TEX.R.APP.P. 26.2(a)(1). The deadline is extended to ninety days after the date the sentence is imposed in open court if the defendant timely files a motion for new trial. *See* TEX.R.APP.P. 26.2(a)(2). A court of appeals may extend the time to file the notice of appeal if, within 15 days after the deadline for filing the notice of appeal, the party files in the trial court the notice of appeal, and files in the appellate court a motion complying with Rule 10.5(b).

TEX.R.APP.P. 26.3. When a notice of appeal is filed within the fifteen-day period, but no timely motion for extension of time is filed, the appellate court lacks jurisdiction. *Olivo*, 918 S.W.2d at 522.

The judgment reflects that the trial court imposed sentence in open court on June 14, 2017. Appellant did not file a motion for new trial. Consequently, Appellant's notice of appeal was due to be filed no later than July 14, 2017, thirty days after the date sentence was imposed in open court. *See* TEX.R.APP.P. 26.2(a)(1). Appellant filed a *pro se* notice of appeal on July 24, 2017, ten days after the deadline, and he did not file a motion requesting an extension of time.

We have considered whether the notice of appeal could be considered timely filed under the "mailbox rule". *See* TEX.R.APP.P. 9.2(b). The *pro se* notice of appeal is a typewritten form which has handwritten information included in the underlined blanks as indicated:

Now comes Solomon Byrd, Defendant in the above entitled and numbered cause, in this the 7th day of July 2017th [sic] 2000 [sic] and within 30 days of sentence having been pronounced against him and files this his written notice of appeal of said conviction to the 168th Judicial District Court. Wherefore premises considered, Defendant prays this notice of appeal be entered of record this date.

The certificate of service attached to the notice of appeal states that Appellant mailed the notice of appeal to the District Attorney and to the trial court clerk, but it does not state the date on which it was mailed or the name and address of the trial court clerk as required by TEX.R.APP.P. 9.5(e)(1) and (2).¹ There is no evidence before us establishing that the notice of appeal was sent to the proper clerk by United States Postal Service or a commercial delivery service, that it was placed in an envelope or wrapper properly addressed and stamped, or that it was deposited in the mail or

¹ The certificate of service includes the address for the District Attorney.

delivered to a commercial delivery service on or before the last day for filing. *See* TEX.R.APP.P. 9.2(b). Consequently, we are unable to find that the notice of appeal was timely filed by operation of the “mailbox rule”. TEX.R.APP.P. 9.2(b). Accordingly, we dismiss the appeal for lack of jurisdiction. *See Olivo*, 918 S.W.2d at 522.

GINA M. PALAFOX, Justice

August 16, 2017

Before McClure, C.J., Rodriguez, and Palafox, JJ.

(Do Not Publish)