



In The
Eleventh Court of Appeals

No. 11-17-00023-CR

BILLY RAY FOSTER, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 350th District Court
Taylor County, Texas
Trial Court Cause No. 11665-D**

MEMORANDUM OPINION

Appellant, Billy Ray Foster, Jr., filed an untimely notice of appeal from a conviction for the offense of unlawful possession of a firearm by a felon. We dismiss the appeal.

The documents on file in this case indicate that Appellant's sentence was imposed on October 25, 2016, and that his notice of appeal was filed in the district clerk's office on January 30, 2017. When the appeal was filed in this court, we

notified Appellant that the notice of appeal appeared to be untimely—as it was due to be filed on or before November 28, 2016. We also informed Appellant that the appeal may be dismissed for want of jurisdiction, and we requested that Appellant respond to our letter and show grounds to continue.

Appellant’s counsel has responded to our jurisdictional inquiry by filing a motion to file an out-of-time appeal. He acknowledges that neither a motion for new trial nor a notice of appeal was timely filed. Counsel explains that, although he intended to file a motion for new trial and a notice of appeal, the failure to timely file these documents was due to a computer glitch that occurred with Google Calendars when he updated the operating system near the end of October 2016. Appellant asks in his motion that this court grant him leave to file an out-of-time appeal.

Pursuant to TEX. R. APP. P. 26.2(a), a notice of appeal is due to be filed either (1) within thirty days after the date that sentence is imposed in open court or (2) if the defendant timely files a motion for new trial, within ninety days after the date that sentence is imposed in open court. A notice of appeal must be in writing and filed with the clerk of the trial court. TEX. R. APP. P. 25.2(c)(1). The documents on file in this court reflect that Appellant did not file a motion for new trial and that his notice of appeal was not filed with the clerk of the trial court until ninety-seven days after sentence was imposed. The notice of appeal was, therefore, untimely. Furthermore, Appellant did not file a timely motion for extension. *See* TEX. R. APP. P. 26.3(b). Absent a timely filed notice of appeal or the granting of a timely motion for extension of time, we do not have jurisdiction to entertain the appeal. *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998); *Olivo v. State*, 918 S.W.2d 519, 522–23 (Tex. Crim. App. 1996); *Rodarte v. State*, 860 S.W.2d 108, 110 (Tex. Crim. App. 1993).

We are not authorized to grant the relief requested by Appellant in his motion. Article 11.07 of the Texas Code of Criminal Procedure vests complete jurisdiction over postconviction relief from final felony convictions in the Texas Court of Criminal Appeals. TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2015); *Hoang v. State*, 872 S.W.2d 694, 697 (Tex. Crim. App. 1993); *Ater v. Eighth Ct. of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding). The Court of Criminal Appeals is the only court with jurisdiction to consider a motion for an out-of-time appeal. *See Ater*, 802 S.W.2d at 243. The appropriate vehicle for Appellant to seek an out-of-time appeal is for him to pursue a writ of habeas corpus from the Court of Criminal Appeals pursuant to Article 11.07.

This appeal is dismissed for want of jurisdiction.

PER CURIAM

February 24, 2017

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.