Dismissed and Memorandum Opinion filed August 31, 2010.

In The

Fourteenth Court of Appeals

NO. 14-10-00748-CR

TROY WAYNE BUSE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 1225102

MEMORANDUM OPINION

Appellant entered a plea of guilty to burglary with intent to commit a felony. Appellant and the State agreed that appellant's punishment would not exceed confinement in prison for more than twenty-five years. In accordance with the terms of this agreement with the State, the trial court sentenced appellant on April 27, 2010, to confinement for twenty years in the Institutional Division of the Texas Department of Criminal Justice. Appellant filed a pro se motion for new trial on May 10, 2010. Appellant's pro se notice of appeal was not filed until August 4, 2010. We dismiss the appeal.

A defendant's notice of appeal must be filed within ninety days after sentence is imposed when the defendant has filed a timely motion for new trial. *See* Tex. R. App. P. 26.2(a)(2). A notice of appeal which complies with the requirements of Rule 26 is essential to vest the court of appeals with jurisdiction. *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998). If an appeal is not timely perfected, a court of appeals does not obtain jurisdiction to address the merits of the appeal. Under those circumstances it can take no action other than to dismiss the appeal. *Id.*

Although the trial court mistakenly entered a certification of the defendant's right to appeal in which the court certified that this is not a plea bargain case and the defendant has the right of appeal, we have no jurisdiction over the appeal. *See* Tex. R. App. P. 25.2(a)(2). Appellant's notice of appeal was not filed timely. In addition, an agreement that places a cap on punishment is a plea bargain for purposes of Texas Rule of Appellate Procedure 25.2(a)(2). *See Waters v. State*, 124 S.W.3d 825, 826–27 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd) (holding reviewing court lacked jurisdiction where defendant pled guilty with a sentencing cap of ten years, even though trial judge mistakenly certified defendant had right of appeal); *Threadgill v. State*, 120 S.W.3d 871, 872 (Tex. App.—Houston [1st Dist.] 2003, no. pet.) (holding statement in record indicating that there was no agreed recommendation did not convert proceeding into an open plea where plea was entered pursuant to agreed sentencing cap); *see also Shankle v. State*, 119 S.W.3d 808, 813 (Tex. Crim. App. 2003) (stating sentence-bargaining may be for recommendations to the court on sentences, including a recommended "cap" on sentencing).

Because appellant's plea was made pursuant to a plea bargain, he may appeal only matters raised by a written pre-trial motion or with the trial court's permission. *See* Tex. R. App. P. 25.2(a)(2). The record does not contain any pre-trial rulings from which appellant may appeal. The trial court's erroneous certification that the case is not a plea bargain case does not constitute permission to appeal. *See Waters*, 124 S.W.3d at 826–27.

Accordingly, we dismiss the appeal.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Sullivan.
Do Not Publish — Tex. R. App. P. 47.2(b).