

Dismissed and Memorandum Opinion filed September 30, 2010.



In The

Fourteenth Court of Appeals

NO. 14-10-00886-CR

MILES DAVID WASHINGTON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 1253634**

MEMORANDUM OPINION

Appellant entered a guilty plea to possession of less than one gram of cocaine. Pursuant to a plea bargain agreement with the State, on June 16, 2010, the trial court deferred a finding of guilt, placed appellant on community supervision for two years, and assessed a \$200 fine. The trial court amended the conditions of community supervision on June 21, 2010, and July 8, 2010. Appellant filed an untimely motion for new trial and notice of appeal on September 3, 2010.

We lack jurisdiction over this appeal. First, the trial court entered a certification of the defendant's right to appeal in which the court certified that this is a plea bargain case, and the defendant has no right of appeal. *See* Tex. R. App. P. 25.2(a)(2). The trial court's certification is included in the record on appeal. *See* Tex. R. App. P. 25.2(d). The record supports the trial court's certification. *See Dears v. State*, 154 S.W.3d 610, 615 (Tex. Crim. App. 2005).

In addition, appellant's notice of appeal is untimely. A defendant's notice of appeal must be filed within thirty days after the trial court has entered an appealable order when the defendant has not filed a timely motion for new trial. *See* Tex. R. App. P. 26.2(a)(1). Because there has been no finding of guilt, a motion for new trial is not available at the time adjudication of guilt is deferred. *See Donovan v. State*, 68 S.W.3d 633, 636 (Tex. Crim. App. 2002); *see also* Tex. R. App. P. 21.4 (requiring motion for new trial to be filed no later than 30 days after the trial court *imposes or suspends sentence*). A motion for new trial is not effective to extend the time for filing a notice of appeal when adjudication of guilt is deferred. *See Garcia v. State*, 29 S.W.3d 899, 901 (Tex. App.—Houston [14th Dist.] 2000, no pet.). 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 and the court can take no action other than to dismiss the appeal. *Id.*

Accordingly, the appeal is ordered dismissed.

PER CURIAM

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Do Not Publish — Tex.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