

Dismissed and Memorandum Opinion filed September 30, 2010.



In The

**Fourteenth Court of Appeals**

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**NO. 14-10-00887-CR**

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**MILES DAVIS WASHINGTON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 230th District Court  
Harris County, Texas  
Trial Court Cause No. 1267951**

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**MEMORANDUM OPINION**

Appellant entered a guilty plea, without an agreed recommendation on punishment, to possession with intent to deliver between one and four grams of cocaine. On July 8, 2010, the trial court deferred a finding of guilt, placed appellant on community supervision for six years, and assessed a \$500 fine. Appellant filed a motion for new trial and notice of appeal on September 3, 2010.

We lack jurisdiction over this appeal. 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Do Not Publish — Tex.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).