

Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio



MEMORANDUM OPINION

No. 04-08-00661-CR

Leobardo **MACIAS**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 81st Judicial District Court, Karnes County, Texas
Trial Court No. 07-12-00177-CRK
Honorable Ron Carr, Judge Presiding

PER CURIAM

Sitting: Phylis J. Speedlin, Justice
Rebecca Simmons, Justice
Steven C. Hilbig, Justice

Delivered and Filed: October 29, 2008

DISMISSED FOR WANT OF JURISDICTION

Appellant was sentenced on May 14, 2008. A timely motion for new trial having been filed, appellant's notice of appeal was due to be filed no later than August 12, 2008. *See* TEX. R. APP. P. 26.2(a)(1). A motion for extension of time to file the notice of appeal was due on August 27, 2008. TEX. R. APP. P. 26.3. Appellant's notice of appeal was filed on August 19, 2008. No motion for extension of time to file a notice of appeal was filed. *See* TEX. R. APP. P. 26.3.

This court issued an order on October 1, 2008 directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. On October 8, 2008, appellant's counsel

filed a written response requesting an extension of time for filing the notice of appeal until August 19, 2008, the date it was file-stamped; counsel also attached written proof that the notice of appeal was mailed by certified mail on August 13, 2008. Because appellant's notice of appeal was not "deposited in the mail on or before the last day for filing," *i.e.*, August 12, 2008, it was not timely filed under Rule 9.2(b)(1). TEX. R. APP. P. 9.2(b)(1). Further, the appellate court may not extend the time to file a notice of appeal unless a motion for extension of time is filed in the appellate court within fifteen (15) days after the deadline for filing the notice of appeal. *See* TEX. R. APP. P. 26.3. As noted, appellant did not file a motion for extension within the fifteen-day grace period. When a notice of appeal *and* a motion for extension of time are not filed within the fifteen-day grace period, the appellate court lacks jurisdiction. TEX. R. APP. P. 26.3; *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996); *see also Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (out-of-time appeal from final felony conviction may be sought by filing a writ of habeas corpus pursuant to article 11.07 of the Texas Code of Criminal Procedure). Accordingly, the appeal is dismissed for lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH

