

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



MEMORANDUM OPINION

No. 04-10-00838-CR

Rafael M. **VILLARREAL**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 186th Judicial District Court, Bexar County, Texas
Trial Court No. 2008CR10755
Honorable Maria Teresa Herr, Judge Presiding

PER CURIAM

Sitting: Rebecca Simmons, Justice
Steven C. Hilbig, Justice
Marialyn Barnard, Justice

Delivered and Filed: December 22, 2010

DISMISSED FOR LACK OF JURISDICTION

The trial court imposed sentence in the underlying cause on November 20, 2009. Because appellant did not file a motion for new trial, the notice of appeal was due to be filed December 21, 2009. TEX. R. APP. P. 26.2(a)(1). A motion for extension of time to file the notice of appeal was due on January 5, 2010. TEX. R. APP. P. 26.3. Appellant filed a notice of appeal on November 22, 2010, and filed a motion to extend time to file the notice of appeal on November 23, 2010.

A timely notice of appeal is necessary to invoke a court of appeals' jurisdiction. *See Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). A late notice of appeal may be considered timely so as to invoke a court of appeals' jurisdiction if: (1) it is filed within fifteen days of the last day allowed for filing; (2) a motion for extension of time is filed in the court of appeals within fifteen days of the last day allowed for filing the notice of appeal; and (3) the court of appeals grants the motion for extension of time. *See id.* In this case, none of the deadlines were met. Because the notice of appeal was untimely, this appeal is dismissed for lack of jurisdiction. *See id.*; *see also Ater v. Eighth Court of Appeals*, 802 S.W.2d 241 (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).

PER CURIAM

DO NOT PUBLISH