



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-12-00709-CR

Robert Allen **WHITE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 21st District Court, Lee County, Texas
Trial Court No. 7370
The Honorable Dan Beck, Judge Presiding

PER CURIAM

Sitting: Catherine Stone, Chief Justice
Karen Angelini, Justice
Santee Bryan Marion, Justice

Delivered and Filed: January 30, 2013

DISMISSED FOR LACK OF JURISDICTION

The trial court imposed sentence in the underlying cause on April 19, 2012. Because appellant did not file a motion for new trial, the notice of appeal was due to be filed May 21, 2012. TEX. R. APP. P. 26.2(a)(1). A motion for extension of time to file the notice of appeal was due on June 5, 2012. TEX. R. APP. P. 26.3. Appellant did not file his notice of appeal until September 19, 2012.

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.*

Because the notice of appeal appeared to be untimely filed in this appeal, appellant was ordered to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellant responded with a motion requesting an out-of-time appeal. This court, however, does not have jurisdiction to grant such a request which must instead be sought from the Texas Court of Criminal Appeals. *See 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). Because appellant failed to file a timely notice of appeal, this appeal is dismissed for lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH