



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-13-00600-CR

Marcel Edgar **REYES**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 399th Judicial District Court, Bexar County, Texas
Trial Court No. 2013CR5449W
Honorable Ray Olivarri, Judge Presiding

PER CURIAM

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

Delivered and Filed: October 2, 2013

DISMISSED FOR LACK OF JURISDICTION

The trial court imposed sentence in the underlying cause on July 3, 2013. Because appellant did not file a motion for new trial, the notice of appeal was due to be filed August 2, 2013. TEX. R. APP. P. 26.2(a)(1). Appellant's notice of appeal was not filed until September 4, 2013.

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.* A motion for extension of time to file the notice of appeal was due on August 23, 2013. TEX. R. APP. P. 26.3. Appellant filed an untimely motion for extension of time in the trial court on September 3, 2013; however, appellant did not file a motion for extension of time in this court.

Because the notice of appeal appeared to have been untimely filed, appellant was ordered to show cause in writing why this appeal should not be 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). Appellant's attorney filed a response, acknowledging that the appeal was untimely filed. Because the notice of appeal was untimely filed, this appeal is dismissed for lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH