

NO. 07-05-0232-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL A
JULY 19, 2005

BOBBY W. WILLARD, APPELLANT

v.

THE STATE OF TEXAS, APPELLEE

FROM THE 364TH DISTRICT COURT OF LUBBOCK COUNTY;
NO. 99-430419; HON. BRADLEY S. UNDERWOOD, PRESIDING

Before REAVIS, CAMPBELL and HANCOCK, JJ.

MEMORANDUM OPINION

Appellant, Bobby W. Willard, appeals from the trial court's order denying appellant's motion for DNA testing. We dismiss the proceeding for lack of jurisdiction.

The order from which appellant is appealing was signed on May 3, 2005. Appellant then filed a notice of appeal on June 14, 2005. To be timely, a notice of appeal must be filed within 30 days after the sentence is imposed or suspended in open court or within 90 days after that date if a motion for new trial is filed. Tex. R. App. P. 26.2(a). No motion for

new trial having been filed, appellant's notice of appeal was due to be filed by June 2, 2005. Because the record discloses that the notice of appeal was received by the clerk on June 14, 2005, Tex. R. App. P. 9.2(b), without seeking an extension of the deadline, Tex. R. App. P. 26.3, the notice of appeal was late.

A timely filed notice of appeal is essential to invoke our appellate jurisdiction. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex.Crim.App. 1996). If it is untimely, we can take no action other than to dismiss the proceeding. *Id.* at 523. Appellant's notice being untimely filed, we have no jurisdiction over the matter and dismiss the appeal.

Per Curiam

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