

NO. 07-05-0312-CR  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL A  
OCTOBER 24, 2005

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CYNTHIA RAYNIA CLAYTOR, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

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FROM THE 47TH DISTRICT COURT OF POTTER COUNTY;

NO. 48,053-A; HONORABLE HAL MINER, JUDGE

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Before REAVIS and CAMPBELL and HANCOCK, JJ.

**MEMORANDUM OPINION**

Appellant Cynthia Raynia Claytor was adjudicated guilty of burglary of a building and sentenced to two years confinement in a state jail facility and a \$10,000 fine. Sentence was imposed on August 3, 2005, and appellant filed a *pro se* "motion to appeal" with the trial court clerk on September 8, 2005. We dismiss the purported appeal.

A defendant must file a written notice of appeal with the trial court clerk within 30 days after the date sentence is imposed. Tex. R. App. P. 252.(c) & 26.2(a)(1). The time in which to file a notice of appeal may be enlarged if, within 15 days after the deadline for doing so, the party files the notice in the trial court and a motion complying with Rule 10.5(b) of the Texas Rules of Appellate Procedure in the appellate court. Tex. R. App. P. 26.3. When a notice, but no motion for extension of time, is filed within the 15-day window, this Court does not have jurisdiction to dispose of the purported appeal in any manner other than by dismissal for want of jurisdiction. *Olivo v. State*, 918 S.W.2d 519, 523 (Tex.Cr.App. 1996). Additionally, we do not have jurisdiction to invoke Rule 2 of the appellate rules in an effort to obtain jurisdiction. Thus, we cannot create jurisdiction where none exists. *Id.* See also, *Slaton v. State*, 981 S.W.2d 208, 209-10 (Tex.Cr.App. 1998).

Appellant's sentence was imposed on August 3, 2005, although the order adjudicating her guilty was not signed until August 22, 2005. However, in a criminal case, the time for perfecting an appeal commences on the date sentence is imposed. Tex. R. App. P. 26.2(a). See also *Rodarte v. State*, 860 S.W.2d 108, 109 (Tex.Cr.App. 1993). No motion for new trial was filed, and although appellant did file a *pro se* motion to retract her guilty plea, under the Texas Rules of Appellate Procedure, it does not extend the time for perfecting an appeal. *Cf.* Rule 26.1(a) which extends the time for perfecting an appeal in a civil case to 90 days if a motion for new trial, motion to modify, motion to reinstate, or a request for findings of fact and conclusions of law is filed. The criminal counterpart, Rule 26.2(a)(2), provides a 90-day extension only if a motion for new trial is filed. We conclude

appellant's notice of appeal filed on September 8, 2005, was untimely and although it was filed within the 15-day extension period, it was unaccompanied by a motion for extension of time reasonably explaining the delay.

Accordingly, the purported appeal is dismissed for want of jurisdiction.<sup>1</sup>

Don H. Reavis  
Justice

Do not publish.

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<sup>1</sup>Appellant may have recourse by filing a post-conviction writ of habeas corpus returnable to the Court of Criminal Appeals for consideration of an out-of-time appeal. See Tex. Code Crim. Proc. Ann. art. 11.07 (Vernon Supp. 2004-05).