



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-21-00237-CR

RICKY LYNN NELSON, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 33rd District Court
Llano County, Texas
Trial Court No. CR7999, Honorable J. Allan Garrett, Presiding

October 21, 2021

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Appellant, Ricky Lynn Nelson, appeals his conviction for evading arrest or detention using a vehicle¹ and sentence to eight years' confinement.² We dismiss the untimely appeal for want of jurisdiction.

¹ TEX. PENAL CODE ANN. § 38.04(b)(2)(A) (third degree felony offense).

² Originally appealed to the Third Court of Appeals, this appeal was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. See TEX. GOV'T CODE ANN. § 73.001.

Appellant was sentenced on July 26, 2021. As no motion for new trial was filed, a notice of appeal was due within thirty days after sentence was imposed, i.e., by August 25, 2021. See TEX. R. APP. P. 26.2(a) (requiring a notice of appeal to be filed within thirty days after sentence is imposed or within ninety days if the defendant timely files a motion for new trial). Appellant filed a notice of appeal on September 9, 2021, fifteen days after the deadline. The following day, September 10, appellant filed a motion for an extension of time asserting that counsel had inadvertently failed to file a motion for new trial.

The timely filing of a written notice of appeal is a jurisdictional prerequisite to hearing an appeal. *Castillo v. State*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2012). Appellate courts may extend the time to file a notice of appeal if the notice and a motion for extension are filed within fifteen days of the deadline. See TEX. R. APP. P. 26.3. When a notice of appeal but no motion for extension of time is filed within the fifteen-day extension period, an appellate court lacks jurisdiction to dispose of the purported appeal in any manner other than by dismissing it for want of jurisdiction. *Olivo v. State*, 918 S.W.2d 519, 523 (Tex. Crim. App. 1996) (en banc).

Because appellant did not file his motion for extension of time within the fifteen-day grace period provided by appellate rule 26.3, we must deny the motion. See TEX. R. APP. P. 26.3; *Olivo*, 918 S.W.2d at 522 (holding that a notice of appeal and a motion for extension of time must be filed within the fifteen-day period to invoke a court of appeals' jurisdiction); *Lair v. State*, 321 S.W.3d 158, 159 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) (explaining that in criminal appeals, no motion for extension is implied when a notice of appeal is filed within fifteen days of the deadline). Appellant's notice of appeal is, therefore, untimely.

Accordingly, we dismiss the appeal for want of jurisdiction.³

Per Curiam

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³ Appellant may be entitled to relief by filing an application for 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.