



NUMBER 13-11-00313-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

VALENTINE GARCIA,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 319th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Vela, and Perkes
Memorandum Opinion Per Curiam**

Appellant, Valentine Garcia, attempted to perfect an appeal from a conviction for aggravated assault with a deadly weapon. We dismiss the appeal for want of jurisdiction.

Sentence in this matter was imposed on January 7, 2011. No motion for new trial was filed. Notice of appeal was filed on May 16, 2011. On May 18, 2011, the Clerk of

this Court notified appellant that it appeared that the appeal was not timely perfected. Appellant was advised that the appeal would be dismissed if the defect was not corrected within ten days from the date of receipt of the Court's directive. Appellant has not responded to this notice.

Texas Rule of Appellate Procedure 26.2 provides that an appeal is perfected when notice of appeal is filed within thirty days after the day sentence is imposed or suspended in open court unless a motion for new trial is timely filed. TEX. R. APP. P. 26.2(a)(1). Where a timely motion for new trial has been filed, notice of appeal shall be filed within ninety days after the sentence is imposed or suspended in open court. TEX. R. APP. P. 26.2(a)(2). The time within which to file the notice may be enlarged if, within fifteen days after the deadline for filing the notice, the party files the notice of appeal and a motion complying with Rule 10.5(b) of the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 26.3.

Appellant's notice of appeal was due to have been filed on or before February 7, 2011. See TEX. R. APP. P. 26.2(a)(2). Appellant did not file a motion for extension of time to file his notice of appeal as permitted by Texas Rule of Appellate Procedure 26.3 and did not file his notice of appeal until May 16, 2011.

This Court's appellate jurisdiction in a criminal case is invoked by a timely filed notice of appeal. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Absent a timely filed notice of appeal, a court of appeals does not obtain jurisdiction to address the merits of the appeal in a criminal case and can take no action other than to dismiss the appeal for want of jurisdiction. *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App.

1998). Appellant may be entitled to an out-of-time appeal by filing a post-conviction writ of habeas corpus returnable to the Texas Court of Criminal Appeals; however, the availability of that remedy is beyond the jurisdiction of this Court. See TEX. CODE CRIM. PROC. ANN. art. 11.07, § 3(a) (Vernon 2005); see also *Ex parte Garcia*, 988 S.W.2d 240 (Tex. Crim. App. 1999).

The appeal is DISMISSED FOR WANT OF JURISDICTION.

PER CURIAM

Do not publish. See TEX. R. APP. P. 47.2(b).

Delivered and filed the
22nd day of August, 2011.