

NO. 12-08-00465-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***MARY JOHNSON GREER,
APPELLANT***

§

APPEAL FROM THE 217TH

V.

§

JUDICIAL DISTRICT COURT OF

***THE STATE OF TEXAS,
APPELLEE***

§

ANGELINA COUNTY, TEXAS

***MEMORANDUM OPINION
PER CURIAM***

This appeal is being dismissed for want of jurisdiction. Appellant pleaded guilty to aggravated robbery pursuant to a plea agreement. Sentence was imposed on October 9, 2008.

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). Appellant did not file a motion for new trial. Therefore, her notice of appeal was due to have been filed on or before November 10, 2008. However, Appellant did not file her notice of appeal until November 20, 2008 and did not file a motion for extension of time to file her notice of appeal as permitted by Texas Rule of Appellate Procedure 26.3. *See* TEX. R. APP. P. 26.3 (appellate court may extend time for filing notice of appeal if, within fifteen days after deadline for filing notice of appeal, appellant files notice of appeal in trial court and motion complying with Texas Rule of Appellate Procedure 10.5(b) in appellate court).

On November 21, 2008, this court notified Appellant that the information received in this appeal does not include a notice of appeal filed within the time allowed by rule 26.2 or a motion for

extension of time to file the notice of appeal pursuant to rule 26.3. Appellant was further informed that the appeal would be dismissed unless, on or before December 1, 2008, if the information in this appeal was not amended to show the jurisdiction of this court. On December 1, 2008, Appellant filed a motion requesting suspension of Texas Rule of Appellate Procedure 2, leave to file a motion for extension of time under rule 26.3, and acceptance of the late filed notice of appeal. Texas Rule of Appellate Procedure 26.3 provides that a motion for extension of time to file a notice of appeal must be filed within fifteen days of the deadline for filing the notice of appeal. TEX. R. APP. P. 26.3. Accordingly, Appellant was required to file her motion on or before November 25, 2008. However, the motion was not filed until December 1, 2008, and therefore was untimely. *See id.*

Because this court has no authority to allow the late filing of a notice of appeal except as provided by rule 26.3, the appeal must be dismissed. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Accordingly, Appellant's motion is overruled, and the appeal is ***dismissed for want of jurisdiction***.¹

Opinion delivered December 3, 2008.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)December 3, 2008

¹ Appellant also requested in her motion that this court order a hearing in the trial court to document the basis for the appeal and appointment of counsel. Our dismissal of the appeal renders this request moot.