

**NO. 12-09-00053-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*FERRELL SCOTT,  
APPELLANT*

§

*APPEAL FROM THE 114TH*

*V.*

§

*JUDICIAL DISTRICT COURT OF*

*THE STATE OF TEXAS,  
APPELLEE*

§

*SMITH COUNTY, TEXAS*

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*MEMORANDUM OPINION  
PER CURIAM*

This appeal is being dismissed for want of jurisdiction. Appellant was convicted of murder for which sentence was imposed on November 5, 1992. He subsequently filed a motion for DNA testing, which the trial court denied by written order signed on August 27, 2008. Appellant now seeks to appeal his conviction and sentence as well as the denial of his motion for DNA testing. We dismiss for want of jurisdiction.

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, or after the day the trial court enters an appealable order. TEX. R. APP. P. 26.2(a)(1). When 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, his notice of appeal from his conviction and sentence was due on or before December 5, 1992, and his notice of appeal from the order denying his motion for DNA testing was due on or before September 26, 2008. However, Appellant did not file his notice of appeal until February 18, 2009 and 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. *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). Moreover, on December 28, 1994, this court affirmed Appellant's conviction for murder. See *Scott v. State*, 894 S.W.2d 810 (Tex. App.—Tyler 1994, pet. ref'd).

On February 20, 2009, this court notified Appellant that the information received in this appeal does not show the jurisdiction of this court. Appellant was further notified that the appeal would be dismissed unless the information was amended, on or before March 2, 2009, to show this court's jurisdiction. Appellant's counsel responded that he does not oppose dismissal of the appeal.

Based upon the foregoing analysis, we conclude that we do not have jurisdiction of this appeal. Accordingly, the appeal is *dismissed for want of jurisdiction*.

Opinion delivered March 11, 2009.

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

(DO NOT PUBLISH)