

**NO. 12-09-00180-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*JASON DEWAYNE LIVELY,  
APPELLANT*

§

*APPEAL FROM THE THIRD*

*V.*

§

*JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,  
APPELLEE*

§

*ANDERSON COUNTY, TEXAS*

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***MEMORANDUM OPINION  
PER CURIAM***

This appeal is being dismissed for want of jurisdiction. Appellant was convicted of intoxication manslaughter. Sentence was imposed on February 25, 2009.

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). A motion for new trial is timely if it is filed no later than thirty days after the date the trial court imposes or suspends sentence in open court. TEX. R. APP. P. 21.4(a). Appellant filed a motion for new trial on April 3, 2009, which was 37 days after his sentence was imposed in open court. Therefore, his motion for new trial was untimely, and his notice of appeal was due to have been filed within thirty days after his sentence was imposed, i.e., on or before March 27, 2009. See TEX. R. APP. P. 26.2(1)(1). However, Appellant did not file his notice of appeal until April 3, 2008 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).

On June 17, 2008, Appellant filed a motion requesting an extension of time for filing his 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 his motion on or before April 13, 2009. Because the motion was not filed until June 17, 2008, it 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*.

Opinion delivered June 17, 2009.

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

(DO NOT PUBLISH)