

NO. 12-09-00346-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*BERNIE RAY LUCAS,
APPELLANT*

§ *APPEAL FROM THE 2ND*

V.

§ *JUDICIAL DISTRICT COURT OF*

*THE STATE OF TEXAS,
APPELLEE*

§ *CHEROKEE COUNTY, TEXAS*

*MEMORANDUM OPINION
PER CURIAM*

This appeal is being dismissed for want of jurisdiction. Appellant was convicted of murder. Sentence was imposed on August 21, 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). Appellant did not file a motion for new trial. Therefore, Appellant's notice of appeal was due to have been filed on or before September 21, 2009. However, Appellant did not file his notice of appeal until October 19, 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).

On October 20, 2009, this court notified Appellant that his notice of appeal was untimely and that there was no timely motion for an extension of time to file the notice of appeal as permitted by rule 26.3. Appellant was further informed that the appeal would be dismissed unless, on or before October 30, 2009, the information filed in this appeal was amended to show the jurisdiction of this court. That deadline has now passed, and Appellant has neither shown the jurisdiction of this court or otherwise responded to this court's notice.

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, the appeal is *dismissed for want of jurisdiction*.

Opinion delivered November 12, 2009.

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

(DO NOT PUBLISH)