

NO. 12-11-00275-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>RICHARD TAYLOR, APPELLANT</i>	§	<i>APPEAL FROM THE 349TH</i>
<i>V.</i>	§	<i>JUDICIAL DISTRICT COURT</i>
<i>THE STATE OF TEXAS, APPELLEE</i>	§	<i>HOUSTON COUNTY, TEXAS</i>

***MEMORANDUM OPINION
PER CURIAM***

This appeal is being dismissed for want of jurisdiction. Appellant, who is pro se, was convicted of aggravated assault and attempts to appeal an order signed on July 28, 2011, denying his motion for leave to file an out of time notice of appeal.

Assuming that the trial court's order is appealable, Texas Rule of Appellate Procedure 26.2 provides that an appeal is perfected when notice of appeal is filed within thirty days after the trial court enters an appealable order. TEX. R. APP. P. 26.2(a)(1). The trial court entered the complained of order on July 28, 2011. Therefore, Appellant's notice of appeal was due to have been filed on or before August 29, 2011. However, Appellant did not file his notice of appeal until September 6, 2011, 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 September 9, 2011, 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 September 19, 2011, the information filed in this appeal was amended to show the jurisdiction of this court. In response to the September 9, 2011 notice, Appellant explained that he delivered his notice of appeal to the prison mail room on August 31, 2011, and the notice of appeal was received by the trial court clerk on September 6, 2011. He acknowledges that he delivered his notice of appeal to the mail room two days after the deadline for filing the notice of appeal, but argues that this delay was through no fault of his own and is excusable under the “doctrine of equitable tolling.” However, if an appeal is not timely perfected, a court of appeals does not obtain jurisdiction to address the merits of the appeal. *Slaton v. State*, 981 S.W.2d 208, 209 (Tex. Crim. App. 1998); *Olivo v. State*, 918 S.W.2d 519, 523 (Tex. Crim. App. 1996). We are unaware of any “doctrine of equitable tolling” that is available to cure the jurisdictional defect in this case.

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*, 981 S.W.2d at 210; *Olivo*, 918 S.W.2d at 522. Accordingly, the appeal is *dismissed for want of jurisdiction*.

Opinion delivered September 21, 2011.

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

(DO NOT PUBLISH)