



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

ARMANDO CORTEZ,	§	No. 08-18-00210-CR
	§	
Appellant,	§	Appeal from
	§	
v.	§	41st District Court
	§	
THE STATE OF TEXAS,	§	of El Paso County, Texas
	§	
Appellee.	§	(TC # 20130D03825)
	§	

MEMORANDUM OPINION

Appellant, Armando Cortez, is attempting to appeal his conviction of family violence assault. We dismiss the appeal for lack of jurisdiction.

The court reporter filed a letter advising the Court that she could not file the reporter's record because Appellant absconded shortly after the trial began. In determining whether we have jurisdiction of this appeal, we have taken judicial notice of the records for cause number 20130D03825 which are available online. *See* TEX.R.EVID. 201(b), (c). The trial court issued a warrant for Appellant, but the official records of the trial court reflect that the warrant remains unserved. While the trial proceeded in Appellant's absence and the jury found him guilty and assessed his punishment *in absentia*, his sentence could not be pronounced in open court. Appellant's attorney filed notice of appeal. Upon receiving the court reporter's letter, the Clerk of

the Court sent the parties a letter raising an issue regarding the Court's jurisdiction of the appeal and giving Appellant an opportunity to file a response. Appellant has not responded to our inquiry.

In a criminal case, the appellate timetable does not begin to run until thirty days after the day sentenced is imposed in open court or within ninety days if the defendant timely files a motion for new trial. *See* TEX.R.APP.P. 26.2(a). As already noted, the trial court has not yet imposed Appellant's sentence in open court. The notice of appeal filed by counsel on Appellant's behalf is premature and it will be effective and deemed filed on the same day sentence is imposed or suspended in open court. *See* TEX.R.APP.P. 27.1. While we have in some cases allowed an appeal to remain pending when a notice of appeal is prematurely filed in order to allow the parties and the trial court to take those steps necessary for the judgment to become final and appealable, there is nothing to indicate that Appellant will be taken into custody or that his sentence will be pronounced in open court within a reasonable period of time. Accordingly, we dismiss the appeal for lack of jurisdiction.

January 23, 2019

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, and Palafox, JJ.

(Do Not Publish)