

## COURT OF APPEALS EIGHTH DISTRICT OF TEXAS EL PASO, TEXAS

	§	
JONATHAN GUIJOSA,		No. 08-19-00014-CR
	§	
APPELLANT,		Appeal from the
	§	
V.		371st District Court
	§	
THE STATE OF TEXAS,		of Tarrant County, Texas
	§	
APPELLEE.		(TC# 1516287D)
	§	

## **MEMORANDUM OPINION**

Appellant, Jonathan Guijosa, is attempting to appeal his conviction of aggravated robbery with a deadly weapon. Jury trial in the case began on October 22, 2018, but the trial court forfeited Appellant's bond when he failed to appear for trial on October 23, 2018. The trial proceeded despite Appellant's absence, and the jury found Appellant guilty and assessed his punishment *in absentia*. Appellant's trial counsel filed notice of appeal to protect Appellant's right to appeal in the event he was apprehended. On January 14, 2019, counsel filed a motion to withdraw asserting that Appellant has not been apprehended and the trial court has informed counsel that the court will not appoint counsel to represent Appellant for purposes of appeal.

Except as permitted by Article 42.14, sentence must be pronounced in the defendant's

presence. TEX.CODE CRIM.PROC.ANN. art 42.03, § 1(a). Because Appellant absconded during

trial and has not been apprehended, the trial court could not pronounce sentence. See id. In a

criminal case, the appellate timetable does not begin to run until the date sentence is imposed in

open court. See TEX.R.APP.P. 26.2(a). The defendant's notice of appeal is due to be filed within

thirty days after the day sentence 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). 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. No purpose is

served by allowing this premature appeal to remain pending on our docket. Accordingly, we grant

counsel's motion to withdraw and dismiss the appeal for lack of jurisdiction.

February 7, 2019

YVONNE T. RODRIGUEZ, Justice

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

(Do Not Publish)

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<sup>1</sup> The circumstances described by Article 42.14 are not present in this case.

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