



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

KENNETH WAYNE MITCHELL,	§	No. 08-21-00161-CR
Appellant,	§	Appeal from the
v.	§	143rd District Court
THE STATE OF TEXAS,	§	of Ward County, Texas
Appellee.	§	(TC#17-11-05897-CRW)
	§	

MEMORANDUM OPINION

On April 18, 2018, Appellant Kenneth Wayne Mitchell pleaded guilty to the offense of aggravated assault with a deadly weapon as alleged in the charging instrument. *See* TEX. PENAL CODE ANN. § 22.02. Pursuant to a plea agreement, the trial court deferred adjudication of guilt and imposed a six-year period of community supervision, along with a fine and court costs. On March 5, 2020, the State filed a motion to adjudicate guilt alleging Appellant had violated several terms of his community supervision. On the same date, the trial court issued an order for the Clerk of the Court to issue a Capias for the arrest of Appellant.

On April 14, 2021, after Mitchell pleaded not true to allegations in the State's motion to adjudicate guilt, the trial court entered a finding of true to allegations in the State's motion, and a

finding of true to an affirmative finding of a deadly weapon. Based on those findings, the trial court revoked Appellant's community supervision and sentenced him to confinement for ten years. On the same date, the trial court certified that the Appellant's criminal case was *not* a plea-bargain case, and he had the right of appeal. Appellant was represented by counsel at the time sentence was pronounced. As no motion for new trial was filed, a notice of appeal was due within thirty days after the judgment was signed, or May 14, 2021. *See* TEX. R. APP. P. 26.2(a) (notice of appeal must be filed within 30 days after the day sentence is imposed or suspended in open court). An appellate court may extend the time to file the notice of appeal if, within 15 days after the deadline for filing the notice of appeal, the party filed the notice of appeal in the trial court, and filed a motion complying with Rule 10.5(b) in the appellate court. *See* TEX. R. APP. P. 26.3(a) and (b).

On September 20, 2021, this Court received and filed Appellant's handwritten, *pro se*, document, dated September 16, 2021, which seeks an extension of time to file an appeal. We construe this document as a notice of appeal. Appellant indicates therein that he understood he had a deadline of May 14, 2021, to file an appeal.¹ He further writes that he has been unable to comply with the deadline due to the impact of the Corona Virus Pandemic on his ability to access court files. He asserts the unit he is housed in has been on lock down due to COVID complications and that this circumstance made it impossible for him to meet his deadline.

It is well settled that our jurisdiction is invoked through a timely notice of appeal. *See Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). If a notice of appeal is not timely filed, we may take no action other than to dismiss the appeal. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (per curiam). Accepting that Appellant's notice of appeal was filed on the date of mailing, or September 16, 2021, the notice is deemed filed 125 days after the required deadline

¹ Appellant filed a document titled, "Petition for Extension on Appeal."

of May 14, 2021. *See Campbell v. State*, 320 S.W.3d 338, 344 (Tex. Crim. App. 2010) (“[P]leadings of *pro se* inmates shall be deemed filed at the time they are delivered to prison authorities for forwarding to the court clerk.”). Moreover, because no motion for extension was filed within the fifteen-day extension period provided by TEX. R. APP. P. 26.3, we lack jurisdiction to dispose of the purported appeal in any manner other than by dismissing it for want of jurisdiction. *See* TEX. R. APP. P. 26.3; *Olivo*, 918 S.W.2d at 522 (holding that a notice of appeal and a motion for extension of time must be filed within the fifteen-day period to invoke a court of appeals’ jurisdiction).

By letter of September 20, 2021, we notified Appellant it appeared his notice of appeal was not timely perfected and directed him to show how we had jurisdiction over his appeal. No response was thereafter received. Because the Texas Supreme Court has not granted appellate courts the authority to toll appellate deadlines to perfect an appeal based on COVID-19 complications, we must deny Appellant’s request for an extension of the appellate deadline. *See Anthony David Lee Leoning v. The State of Texas*, No. 07-21-00224-CR, 2021 WL 4948624, at *1 (Tex. App.—Amarillo Oct. 25, 2021, no pet. h.) (mem. op., not designated for publication); *Cantu v. Trevino*, No. 13-20-00299-CV, 2020 WL 6073267, at *5 (Tex. App.—Corpus Christi Sept. 24, 2020, no pet.) (mem. op.). In the absence of a timely filed notice of appeal, a court of appeals does not have jurisdiction to address the merits of the appeal in a criminal case and can take no action other than to dismiss the appeal for want of jurisdiction. *See Slaton*, 981 S.W.2d at 210. Only the Court of Criminal Appeals has jurisdiction to grant Appellant an out-of-time appeal of the adjudication of his felony conviction. *See Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (explaining that writ of habeas corpus pursuant to article 11.07 of the Texas Code of Criminal Procedure governs out-of-time appeals from felony convictions).

Accordingly, we dismiss the appeal for want of jurisdiction.

GINA M. PALAFOX, Justice

October 29, 2021

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

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