

Opinion filed August 20, 2009



In The

# Eleventh Court of Appeals

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No. 11-09-00195-CR

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**RUTH VELASQUEZ BIRD, Appellant**

**V.**

**STATE OF TEXAS, Appellee**

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**On Appeal from the 385th District Court**

**Midland County, Texas**

**Trial Court Cause No. CR30400**

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## **MEMORANDUM OPINION**

The trial court revoked Ruth Velasquez Bird's community supervision and imposed a sentence of confinement for five years and ordered her to pay the balance of her original fine. We dismiss the appeal for want of jurisdiction.

The trial court imposed the sentence in open court on March 26, 2009. A motion for new trial was timely filed. Pursuant to TEX. R. APP. P. 26.2, the notice of appeal was due to be filed within ninety days after the date the sentence was imposed in open court. Appellant filed her notice of

appeal on June 29, 2009, ninety-five days after the date the sentence was imposed. A motion for extension of time was not filed within the time period provided for in TEX. R. APP. P. 26.3.

Absent a timely notice of appeal or compliance with Rule 26.3, this court lacks jurisdiction to entertain an appeal. *Slaton v. State*, 981 S.W.2d 208, 209-10 (Tex. Crim. App. 1998); *Olivo v. State*, 918 S.W.2d 519, 522-24 (Tex. Crim. App. 1996); *Rodarte v. State*, 860 S.W.2d 108, 109-10 (Tex. Crim. App. 1993); *Shute v. State*, 744 S.W.2d 96, 97 (Tex. Crim. App. 1988). Appellant may be able to secure an out-of-time appeal by filing a postconviction writ pursuant to TEX. CODE CRIM. PROC. ANN. art. 11.07 (Vernon Supp. 2008).

In an effort to prevent undue delay and to conserve judicial resources, the parties filed a joint motion with the trial court stating that the failure to timely file the notice of appeal was due to the inadvertent miscalculation of the due date, that they were aware that relief under Article 11.07 could be pursued, that they agreed to waive any jurisdictional issues, and that they did not wish to cause any unnecessary delay to the appellate procedure or to inconvenience the courts involved in the appeal. We appreciate counsel's candor and intentions. However, absent compliance with Rules 26.2 and 26.3 or with the special circumstances outlined in *Nix v. State*, 65 S.W.3d 664, 669 n.22 (Tex. Crim. App. 2001), and *Rodriguez v. Court of Appeals, Eighth Supreme Judicial District*, 769 S.W.2d 554, 557-59 (Tex. Crim. App. 1989), this court is unable to entertain an appeal in this case at this time. *See also Ex parte Simpson*, 260 S.W.3d 172 (Tex. App.—Texarkana 2008, pet. ref'd); *Ex parte Williams*, 239 S.W.3d 859 (Tex. App.—Austin 2007, no pet.); *Parr v. State*, 206 S.W.3d 143 (Tex. App.—Waco 2006, no pet.).<sup>1</sup>

The appeal is dismissed for want of jurisdiction.

PER CURIAM

August 20, 2009

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,  
McCall, J., and Strange, J.

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<sup>1</sup>These cases indicate that a trial court has authority to grant an out-of-time appeal where the appellant is neither restrained nor in custody and the appellant seeks relief under TEX. CODE CRIM. PROC. ANN. art. 11.05 (Vernon 2005).