

DISMISS; Opinion issued February 20, 2013



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-13-00167-CR

EX PARTE JOHN MICHAEL DAISY

**On Appeal from the Criminal District Court No. 7
Dallas County, Texas
Trial Court Cause No. WX12-90053-Y**

MEMORANDUM OPINION

**Before Justices Bridges, FitzGerald, and Myers
Opinion by Justice Bridges**

John Michael Daisy was convicted of forgery on August 27, 2009. The trial court sentenced appellant to two years' confinement in a state jail, probated for four years. On September 5, 2012, appellant filed an application for writ of habeas corpus under article 11.072 of the Texas Code of Criminal Procedure. By order dated November 16, 2012, the trial court denied appellant the relief he sought. Appellant's notice of appeal was due by Monday, December 16, 2012. *See* TEX. R. APP. P. 26.2(a)(1). The Court now has before it appellant's February 4, 2013 notice of appeal and motion to extend time to file his notice of appeal. We conclude we lack jurisdiction over the appeal.

To obtain the benefit of the extension period provided by rule 26.3, appellant had to both file his notice of appeal in the trial court and file his extension motion in this Court by Wednesday, January 2, 2013. *See* TEX. R. APP. P. 4.1(a), 26.2(a)(1); *Slaton v. State*, 981 S.W.2d

208, 210 (Tex. Crim. App. 1998) (per curiam). Appellant's joint notice of appeal and extension motion reflect that they were signed by appellant on January 29, 2013. They are file-stamped February 4, 2013. Both dates are outside the thirty-day period provided by rule 26.2(a)(1) and the fifteen-day extension period provided by rule 26.3. Therefore, the documents are untimely, leaving us without jurisdiction to take any action but to dismiss the appeal. *See Slaton*, 981 S.W.2d at 210. We deny appellant's February 4, 2013 motion to extend time to file his notice of appeal.

We dismiss the appeal for want of jurisdiction.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

EX PARTE JOHN MICHAEL DAISY

No. 05-13-00167-CR

On Appeal from the Criminal District Court
No. 7, Dallas County, Texas
Trial Court Cause No. WX12-90053-Y.
Opinion delivered by Justice Bridges,
Justices FitzGerald and Myers participating.

Based on the Court's opinion of this date, we **DISMISS** the appeal for want of jurisdiction.

Judgment entered February 20, 2013.

/David L. Bridges/

DAVID L. BRIDGES
JUSTICE