

**DISMISS and Opinion Filed April 5, 2013**



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

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**No. 05-13-00270-CR**

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**SEAN KEITH SHARER, Appellant  
V.  
THE STATE OF TEXAS, Appellee**

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**On Appeal from the 416th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 416-81234-2011**

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**MEMORANDUM OPINION**

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

Sean Keith Sharer was convicted of theft of property valued at \$20,000 or more but less than \$100,000. Punishment, enhanced by one prior felony conviction, was assessed at five years' imprisonment. Sentence was imposed in open court on November 2, 2012. Appellant filed a timely motion for new trial; therefore, his notice of appeal was due by January 31, 2013. *See* TEX. R. APP. P. 26.2(a)(2). On February 14, 2013, appellant sent the Collin County District Clerk a letter inquiring about the status of his appeal. A notice of appeal was filed for appellant on February 22, 2013. Because it appeared appellant's notice of appeal was untimely, we directed the parties to file letter briefs addressing our jurisdiction over the appeal. Neither appellant nor the State responded. We conclude we lack jurisdiction over the appeal.

"Timely filing of a notice of appeal is a jurisdictional prerequisite to hearing an appeal." *Castillo v. State*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2012). If the notice of appeal is not

timely, a court of appeals has no option but to dismiss the appeal for lack of jurisdiction. *Id.* If a timely motion for new trial is filed, a notice of appeal is due within ninety days of the date sentence is imposed in open court. *See* TEX. R. APP. P. 26.2(a)(2). An appellate court may extend the time to file a notice of appeal if, within fifteen days of the deadline for filing the notice of appeal, both the notice of appeal is filed in the trial court and an extension motion is filed in the court of appeals. *See* TEX. R. APP. P. 26.3; *Slaton v. State*, 981 S.W.2d 208, 209–10 (Tex. Crim. App. 1998) (per curiam).

Appellant’s notice of appeal was due by January 31, 2013. *See* TEX. R. APP. 26.2(a)(2). Appellant’s notice of appeal was not filed until February 22, 2013, which is outside the fifteen-day period provided by rule 26.3. Moreover, even if appellant’s February 14, 2013 letter could be construed as a pro se notice of appeal, no extension motion was filed in this Court within fifteen days of January 31, 2013. *See Slaton*, 918 S.W.2d at 209–10. Therefore, we have no option but to dismiss the appeal. *See Castillo*, 369 S.W.3d at 198.

We dismiss the appeal for want of jurisdiction.

/Kerry P. FitzGerald/  
KERRY P. FITZGERALD  
JUSTICE

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

**JUDGMENT**

SEAN KEITH SHARER, Appellant

No. 05-13-00270-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 416th Judicial District  
Court, Collin County, Texas

Trial Court Cause No. 416-81234-2011.

Opinion delivered by Justice FitzGerald,  
Justices Bridges and Myers participating.

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

Judgment entered April 5, 2013.

/Kerry P. FitzGerald/

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KERRY P. FITZGERALD  
JUSTICE