

DISMISS; Opinion Filed May 16, 2013.



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

No. 05-13-00667-CR

CHRISTIAN GABRIEL MCCULLOUGH, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 204th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F12-70377**

MEMORANDUM OPINION

Before Justices Lang, Myers, and Evans
Opinion by Justice Myers

Christian Gabriel McCullough was convicted, upon his adjudication of guilt, of forgery of a check and was sentenced to confinement for one year in a state jail. Sentence was imposed in open court on December 3, 2012. On April 23, 2013, appellant filed a motion for a judgment nunc pro tunc seeking additional back time credit. The trial court does not appear to have ruled on the motion, but on May 3, 2013, appellant filed a notice of appeal asserting he is being denied back time credit to which he is entitled. We conclude we lack jurisdiction over the appeal.

Presentence time credit claims typically must be raised by motion for judgment nunc pro tunc, as appellant did here. *See Ex parte Florence*, 319 W.W.3d 695, 696 (Tex. Crim. App. 2010) (per curiam). However, if the trial court denies a motion for judgment nunc pro tunc or fails to respond, the proper avenue for relief is by petition for writ of mandamus. *See id.* Or, if the applicant claims he is being illegally confined because he would have discharged his

sentence if he had been given proper time credit, he may seek relief by post-conviction writ of habeas corpus under article 11.07 of the Texas Code of Criminal Procedure. *See id.*

Appellant did not utilize the above avenues for relief. Rather, he filed a notice of appeal, which is not one of the identified remedies. Accordingly, we conclude we lack jurisdiction over the appeal.

We dismiss the appeal for want of jurisdiction.

/Lana Myers/

LANA MYERS
JUSTICE

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

JUDGMENT

CHRISTIAN GABRIEL MCCULLOUGH,
Appellant

No. 05-13-00667-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F12-70377.
Opinion delivered by Justice Myers,
Justices Lang and Evans participating.

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

Judgment entered this 16th day of May, 2013.

/Lana Myers/

LANA MYERS
JUSTICE