

DISMISS; and Opinion Filed September 11, 2013.



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

No. 05-13-01083-CR

**TOMMY MARK LAYMAN, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 2
Dallas County, Texas
Trial Court Cause No. F13-53590-I**

MEMORANDUM OPINION

Before Justices Bridges, Fillmore, and Lewis
Opinion by Justice Fillmore

Tommy Mark Layman filed a notice of appeal which stated it was being filed within thirty days of July 5, 2013 and was appealing his conviction. We have received written confirmation from the Dallas County District Clerk that there is no judgment of conviction because the case has not yet proceeded to trial.¹

“Jurisdiction concerns the power of a court to hear and determine a case.” *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). The jurisdiction of an appellate court must be legally invoked, and if not, the power of the court to act is as absent as if it did not exist. *See id.* at 523. As a general rule, an appellate court may consider appeals by criminal defendants only after conviction. *Wright v. State*, 969 S.W.2d 588, 589 (Tex. App.—Dallas 1998, no pet.). A

¹ Although appellant is represented by counsel in the trial court, he filed a pro se notice of appeal. We sent appellant’s attorney and the Dallas County District Attorney’s Office a letter questioning our jurisdiction, but we did not receive a response from either.

court of appeals has no jurisdiction over an appeal absent a written judgment or an appealable order. *See Gutierrez v. State*, 307 S.W.3d 318, 321 (Tex. Crim. App. 2010); *Nikrasch v. State*, 698 S.W.2d 443, 450 (Tex. App.—Dallas 1985, no pet.).

Because there is no judgment of conviction or other appealable order, we lack jurisdiction over this appeal. *See Gutierrez*, 307 S.W.3d at 321; *Nikrasch*, 698 S.W.2d at 450. Accordingly, we dismiss the appeal for want of jurisdiction.

/Robert M. Fillmore/

ROBERT M. FILLMORE
JUSTICE

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TEX. R. APP. P. 47

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

JUDGMENT

TOMMY MARK LAYMAN, Appellant

No. 05-13-01083-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 2, Dallas County, Texas

Trial Court Cause No. F13-53590-I.

Opinion delivered by Justice Fillmore,
Justices Bridges and Lewis participating.

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

Judgment entered this 11th day of September, 2013.

/Robert M. Fillmore/

ROBERT M. FILLMORE

JUSTICE