

DISMISS; and Opinion Filed September 29, 2014.



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

No. 05-14-01174-CR

**GEOVANY HUMBERTO LOPEZ, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 363rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F06-45178-W**

MEMORANDUM OPINION

Before Justices FitzGerald, Fillmore, and Stoddart
Opinion by Justice Fillmore

Geovany Humberto Lopez was convicted of intoxication assault, *see* TEX. PENAL CODE ANN. § 49.07 (West 2011), and sentenced to five years' imprisonment. Sentence was imposed in open court on July 15, 2014. No motion for new trial was filed; therefore, appellant's notice of appeal was due by August 14, 2014. *See* TEX. R. APP. P. 26.2(a)(1). Appellant's notice of appeal is hand-dated August 28, 2014 and file-stamped September 11, 2014. Even though the handwritten date is within the fifteen-day extension period provided by rule 26.3, nothing reflects the notice of appeal was mailed, or delivered to prison authorities for mailing, on or before August 29, 2014. *See* TEX. R. APP. P. 9.2(b), 26.3(a); *Campbell v. State*, 320 S.W.3d 338 (Tex. Crim. App. 2010) (pro se "prisoner mailbox rule"). Moreover, appellant did not file an extension motion in this Court by August 29, 2014. *See* TEX. R. APP. P. 26.3(b); *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (per curiam) (notice of appeal compliant with

requirements of rule 26 essential to vest court of appeals with jurisdiction); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996) (court of appeals may grant extension of time to file notice of appeal if notice is filed within fifteen days after last day allowed and, within same period, a motion is filed in court of appeals reasonably explaining need for extension of time). Therefore, we asked the parties to file letter briefs addressing our jurisdiction over the appeal. Appellant's counsel filed a letter brief confirming that the notice of appeal is untimely and stating appellant does not desire to pursue the appeal.

We agree the notice of appeal is untimely, leaving us without jurisdiction over the appeal. 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

GEOVANY HUMBERTO LOPEZ,
Appellant

No. 05-14-01174-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 363rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F06-45178-W.
Opinion delivered by Justice Fillmore,
Justices FitzGerald and Stoddart
participating.

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

Judgment entered this 29th day of September, 2014.