

Dismissed and Opinion Filed January 15, 2016



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-01363-CR

EDWIN CHARLES SALTER, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 1
Dallas County, Texas
Trial Court Cause No. F-1439502-H

MEMORANDUM OPINION

Before Justices Francis, Evans, and Stoddart
Opinion by Justice Francis

A jury convicted Edwin Charles Salter of theft of property valued at less than \$1,500, having two previous theft convictions, and assessed punishment at confinement for one year in a state jail facility. Sentence was imposed in open court on August 11, 2015. On November 6, 2015, appellant filed a pro se notice of appeal and a motion to extend time to file his notice of appeal. Because there was a question of whether a motion for new trial had been filed, the Court ordered the trial court to make findings regarding the matter. By order dated January 8, 2016, we adopted the trial court's finding that the record did not show the filing of a motion for new trial. We conclude we lack jurisdiction over the appeal.

“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. “The standard to determine whether an appellate court has jurisdiction to hear and determine a case ‘is not whether the appeal is precluded by law, but whether the appeal is authorized by law.’” *Blanton v. State*, 369 S.W.3d 894, 902 (Tex. Crim. App. 2012) (quoting *Abbott v. State*, 271 S.W.3d 694, 696–97 (Tex. Crim. App. 2008)). The right to appeal in a criminal case is a statutorily created right. *See McKinney v. State*, 207 S.W.3d 366, 374 (Tex. Crim. App. 2006); *Griffin v. State*, 145 S.W.3d 645, 646 (Tex. Crim. App. 2004). *See also* TEX. CODE CRIM. P. ANN. art. 44.02 (West 2006) (providing right of appeal for defendant); TEX. R. APP. P. 25.2(a)(2) (rules for appeal by defendant).

To invoke this Court’s jurisdiction, an appellant must timely file a notice of appeal. *See* TEX. R. APP. P. 26.2(a). When no motion for new trial is filed, the appellant’s notice of appeal is due within thirty days of the date sentence is imposed in open court. *Id.* 26.2(a)(1). To obtain the benefit of the fifteen-day extension period provided by the rules of appellate procedure, an appellant must, within fifteen days of the date it was due, file both the notice of appeal in the trial court and an extension motion in the appellate court. *See id.* 26.3; *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (per curiam); *Olivo*, 918 S.W.2d at 522.

In this case, appellant’s sentence was imposed in open court on August 11, 2015. No motion for new trial was filed; therefore, his notice of appeal was due by September 10, 2015. *See* TEX. R. APP. P. 26.2(a)(1). To obtain the benefit of the extension period, appellant had to file both his notice of appeal and the extension motion by September 25, 2015. *See id.* 26.3; *Slaton*, 981 S.W.2d at 210; *Olivo*, 918 S.W.2d at 522. Appellant’s pro se notice of appeal and extension motion, as well as the letters that accompanied them, reflect they were prepared on November 1, 2015, outside the fifteen-day extension period provided by rule 26.3. Therefore, we can take no action except to dismiss the appeal. *See Slaton*, 981 S.W.2d at 210; *Olivo*, 918

S.W.2d at 523. Accordingly, we deny appellant's November 6, 2015 motion to extend time to file his notice of appeal.

We dismiss the appeal for want of jurisdiction.

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/Molly Francis/

MOLLY FRANCIS
JUSTICE



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

JUDGMENT

EDWIN CHARLES SALTER, Appellant

No. 05-15-01363-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 1, Dallas County, Texas

Trial Court Cause No. F14-39502-H.

Opinion delivered by Justice Francis,

Justices Evans and Stoddart participating.

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

Judgment entered January 15, 2016.