

Dismissed and Opinion Filed January 7, 2016



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-01569-CR

ROSHAUN NICHOLAS SMITH, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F09-51111-V

MEMORANDUM OPINION

Before Chief Justice Wright and Justices Myers and Brown
Opinion by Chief Justice Wright

Roshaun Nicholas Smith was convicted of murder. Punishment was assessed at forty-five years' imprisonment and a \$10,000 fine, and was imposed in open court on August 6, 2010. The trial court's judgment was affirmed on direct appeal. *Smith v. State*, No. 05-10-01555-CR, 2012 WL 975730 (Tex. App.—Dallas Mar. 23, 2012, pet. ref'd) (not designated for publication). The Court now has before it appellant's December 18, 2015 "notice of appeal," in which appellant seeks an out-of-time appeal. We dismiss the appeal for want of jurisdiction.

"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, a timely notice of appeal must be filed. *See* TEX. R. APP. P. 26.2(a); *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (per curiam). Appellant’s December 18, 2015 notice of appeal is untimely as to the August 6, 2010 sentencing date. Appellant does not state that any further appealable orders have been entered by the trial court. Rather, he is seeking an out-of-time appeal or petition for discretionary review. This Court has no authority to grant appellant either an out-of-time appeal or petition for discretionary review.

Accordingly, we dismiss the appeal for want of jurisdiction.

Do Not Publish
TEX. R. APP. P. 47
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/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE



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

JUDGMENT

ROSHAUN NICHOLAS SMITH, Appellant

No. 05-15-01569-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F09-51111-V.

Opinion delivered by Chief Justice Wright,
Justices Myers and Brown participating.

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

Judgment entered January 7, 2016.