

**DISMISS; and Opinion Filed March 14, 2016.**



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

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**No. 05-16-00264-CR**

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**MICHAEL LEMUS, Appellant  
V.  
THE STATE OF TEXAS, Appellee**

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**On Appeal from the 291st Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. F11-60118-U**

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**MEMORANDUM OPINION**

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

Michael Lemus was convicted, following the adjudication of his guilt, of aggravated robbery with a deadly weapon. On August 27, 2012, the trial court sentenced appellant to fifteen years' imprisonment. No appeal was taken at that time. On March 7, 2016, appellant filed in this Court a pro se notice of appeal. In the notice of appeal, appellant seeks an out-of-time appeal, asserting trial counsel failed to advise him of his right to appeal at the time he was sentenced. 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, an appellant must timely file a notice of appeal. See TEX. R. APP. P. 26.2(a); *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (per curiam). When no motion for new trial is filed, an appellant’s notice of appeal is due within thirty days of the date sentence was imposed in open court. See TEX. R. APP. P. 26.2(a)(1).

Appellant’s March 7, 2016 notice of appeal is untimely as to the August 27, 2012 sentencing date. Nothing in the notice of appeal reflects the Texas Court of Criminal Appeals granted appellant an out-of-time appeal, and this Court has no authority to grant an out-of-time appeal. See *Slaton*, 981 S.W.2d at 210 (appellate court has no jurisdiction over appeal not timely perfected); see also *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (only court of criminal appeals has jurisdiction over final post-conviction felony proceedings). Therefore, we have no jurisdiction over the appeal.

We dismiss the appeal for want of jurisdiction.

/Robert M. Fillmore/  
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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**

MICHAEL LEMUS, Appellant

No. 05-16-00264-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial District  
Court, Dallas County, Texas

Trial Court Cause No. F11-60118-U.

Opinion delivered by Justice Fillmore,  
Justices Stoddart and Schenck participating.

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

Judgment entered this 14th day of March, 2016.