

Dismissed and Opinion Filed May 27, 2016



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00492-CR

DAVID ROYAL, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial District Court
Dallas County, Texas
Trial Court Cause No. F14-00181-U

MEMORANDUM OPINION

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

This appeal was filed April 27, 2016. After reviewing the clerk’s record, the Court had questions concerning its jurisdiction over the appeal and asked the parties to brief the issue. A review of the record shows the sentence was imposed in open court on August 13, 2014, following appellant’s slow plea of guilty to a jury. Both appellant’s motion for new trial and notice of appeal are file-stamped August 12, 2014, one day before sentence was imposed. The docket sheet entry reflects the jury received evidence and argument on August 12, 2014, and was retired at 3:35 p.m. The record, however, reflects that the jury’s verdict of guilty was received by the trial court on August 13, 2014. 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, a notice of appeal must be timely filed. *See* TEX. R. APP. P. 26.2(a); *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998). A premature notice of appeal is effective and deemed to be filed on the same day, but after sentence is imposed in open court. *See* TEX. R. APP. P. 27.1(b). However, a notice of appeal that is filed before the jury returns a finding of guilt or the trial court makes finding of guilt is not effective. *Id.*

In response to our jurisdictional inquiry, appellant concedes his notice of appeal was filed before the jury returned its guilty verdict. Nevertheless, he contends we should construe it as prematurely filed and effective to invoke our jurisdiction because the “only real issue in Appellant’s case was his sentence” and the “jury had no option but to find Appellant guilty.” The State responds that although it agreed a finding of guilt was a “foregone conclusion,” that does not confer jurisdiction on the Court because appellant’s notice of appeal was filed before the finding of guilt was returned. Thus, the State asserts, this Court does not have jurisdiction over the appeal.

The plain language of rule 27.1(b) provides that a notice of appeal is not effective if it is filed before the trial court makes a finding of guilt or receives a jury verdict of guilt. *See id.* Because appellant's notice of appeal was filed before the trial court received the jury's verdict of guilt, it was ineffective to invoke this Court's jurisdiction. *See id.* Accordingly, we lack jurisdiction over the appeal.

We dismiss this appeal for want of jurisdiction.

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

Do Not Publish
TEX. R. APP. P. 47
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

DAVID ROYAL, Appellant

No. 05-16-00492-CR V.

THE STATE OF TEXAS, Appellee

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

Trial Court Cause No. F14-00181-U.

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

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

Judgment entered May 27, 2016.