

Dismissed; Opinion Filed October 28, 2016.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01220-CR

MELISSA ANN BENJAMIN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 194th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F13-24070-M

MEMORANDUM OPINION

Before Justices Lang, Myers, and Evans
Opinion by Justice Myers

Melissa Anne Benjamin pleaded guilty to assault of a public servant, and the trial court placed her on deferred adjudication for three years. In August 2016, the State filed a motion to proceed with an adjudication of guilt, alleging that appellant violated several terms and conditions of her probation. Appellant entered an open plea of true to the allegations, and on September 27, 2016, the trial court continued her on probation. Appellant then filed this appeal. For the reasons that follow, we conclude we have no jurisdiction over the appeal.

As a general rule, an appellate court may consider appeals by criminal defendants only after conviction. *Wright v. State*, 969 S.W.2d 588, 589 (Tex. App.–Dallas 1998, no pet.). With regard to deferred adjudication, the Texas Legislature has authorized appeal of only two types of orders: (1) an order granting deferred adjudication, and (2) an order imposing punishment

pursuant to an adjudication of guilt. *Davis v. State*, 195 S.W.3d 708, 711 (Tex. Crim. App. 2006). Orders modifying the terms or conditions of deferred adjudication are not in themselves appealable. *Id.* Here, there is no judgment of conviction. Rather, the trial court continued appellant on probation. Under these circumstances, we conclude we do not have jurisdiction.

See id

We dismiss this appeal for lack of jurisdiction.

/Lana Myers/
LANA MYERS
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

MELISSA ANN BENJAMIN, Appellant

No. 05-16-01220-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 194th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F13-24070-M.
Opinion delivered by Justice Myers, Justices
Lang and Evans participating.

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

Judgment entered this 28th day of October, 2016.