

DISMISS; and Opinion Filed November 16, 2017.



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

No. 05-17-01131-CR

**CALVIN JOSEPH, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 401st Judicial District Court
Collin County, Texas
Trial Court Cause No. 401-82925-2015**

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Fillmore

Calvin Joseph pleaded guilty without the benefit of a plea agreement to possession of less than one gram of cocaine within one thousand feet of an elementary school. The trial court found him guilty and sentenced him to five years in prison. Joseph then appealed his conviction to this Court. We dismiss this appeal for lack 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 it is not, the power of the court to act is as absent as though it did not exist. *See id.* at 523. 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). The right to appeal in a criminal case is statutorily created. *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. PROC. 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). Appellate courts may consider appeals by criminal defendants only after conviction or the entry of an appealable order and a timely filed notice of appeal. *See Wright v. State*, 969 S.W.2d 588, 589 (Tex. App.—Dallas 1998, no pet.); TEX. R. APP. P. 26.2(a).

The record reflects the trial court’s judgment was signed October 12, 2016. No motion for new trial was filed; therefore, Joseph’s notice of appeal was due November 14, 2016. *See* TEX. R. APP. P. 4.1(a), 26.2(a)(1). Joseph filed his notice of appeal in the trial court on August 30, 2017, outside of the thirty-day period allowed by rule 26.2. Because his notice of appeal was untimely, we lack jurisdiction to “dispose of the purported appeal in any manner other than by dismissing it for lack of jurisdiction.” *Olivo*, 918 S.W.2d at 523. *See Boyd v. State*, 971 S.W.2d 603, 605 (Tex. App.—Dallas 1998, no pet.).

We dismiss this appeal for want of jurisdiction.

/Robert M. Fillmore/

ROBERT M. FILLMORE
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

CALVIN JOSEPH, Appellant

No. 05-17-01131-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 401st Judicial District
Court, Collin County, Texas.

Trial Court Cause No. 401-82925-2015.

Opinion delivered by Justice Fillmore,
Justices Lang-Miers and Stoddart
participating.

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

Judgment entered this 16th day of November, 2017.