

DISMISSED and Opinion Filed January 17, 2018.



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

No. 05-17-01319-CR

**MATTHEW SCOTT BURTON, JR., Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the County Court at Law
Rockwall County, Texas
Trial Court Cause No. CR15-0298**

MEMORANDUM OPINION

Before Justices Bridges, Myers, and Schenck
Opinion by Justice Myers

Mathew Scott Burton, Jr. appeals the trial court's October 12, 2017 judgment convicting him of driving while intoxicated and assessing a sentence of ninety days confinement and a \$500 fine, probated for nineteen months. We dismiss the appeal for want of jurisdiction.

A timely filed notice of appeal is required to invoke this Court's jurisdiction. *Castillo v. State*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2012). In the absence of a timely filed notice of appeal, the Court has no option other than to dismiss the appeal. *Id.* A defendant perfects his appeal by filing with the trial court clerk, within thirty days after the date sentence was imposed, or within ninety days after sentencing if the defendant timely filed a motion for new trial, a written notice of appeal showing his or her desire to appeal. *See* TEX. R. APP. P. 25.2(b), (c), 26.2(a).

Because the record shows appellant did not file a motion for new trial, his notice of appeal was due no later than Monday, November 13, 2017. *See* TEX. R. APP. P. 4.1, 26.2(a)(1). The notice of appeal filed in this case bears a file stamp of November 14, 2017.

By letter dated December 5, 2017, the Clerk of the Court informed the parties of the apparent jurisdictional defect and directed them to file letter briefs addressing the Court's jurisdictional questions and, if necessary, a supplemental record for any necessary information not already in the appellate record. Neither party responded to the Clerk's directive.

On December 11, 2017, the trial court's official court reporter filed a letter representing to the Court that she had not filed the reporter's record because appellant had neither requested it nor arranged to pay for it. The official court reporter also stated in her letter that appellant's counsel had informed her via email delivered on December 4, 2017 that appellant was not pursuing this appeal.

Because appellant's notice of appeal was untimely, we conclude we have no jurisdiction over this appeal. *See* TEX. R. APP. P. 26.2(a)(1); *Castillo*, 369 S.W.3d at 198.

We dismiss the appeal.

/Lana Myers/

LANA MYERS
JUSTICE

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TEX. R. APP. P. 47
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**Court of Appeals
Fifth District of Texas at Dallas
JUDGMENT**

MATTHEW SCOTT BURTON, JR.,
Appellant

No. 05-17-01319-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law,
Rockwall County, Texas
Trial Court Cause No. CR15-0298.
Opinion delivered by Justice Myers. Justices
Bridges and Schenck participating.

Based on the Court's opinion of this date, the appeal is **DISMISSED**.

Judgment entered this 17th day of January, 2018.