

Dismissed and Opinion Filed June 21, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00573-CR
No. 05-18-00574-CR
No. 05-18-00575-CR

ANDREW PETE, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F12-33559-V, F12-33560-V & F12-33561-V

MEMORANDUM OPINION

Before Justices Francis, Fillmore, and Whitehill
Opinion by Justice Francis

Andrew Pete was convicted of three aggravated sexual assaults of a child younger than fourteen years of age and, on November 15, 2017, the trial court assessed punishment at eight years in prison for each offense. In May 2018, appellant filed a motion for out-of-time appeals in the trial court. By order dated May 11, 2018, the trial court denied his motion, stating that it lacked jurisdiction to grant appellant the relief he requested. Appellant's notices of appeal were filed in this Court on May 17, 2018.

When a criminal defendant misses the deadline to file a notice of appeal following conviction, intermediate appellate courts lack jurisdiction over the appeal. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Intermediate appellate courts may obtain jurisdiction after those deadlines have passed only if the Texas Court of Criminal Appeals grants the defendant

the ability to pursue an out-of-time appeal. *See Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding); *Ex parte Torres*, 943 S.W.2d 469, 472 (Tex. Crim. App. 1997) (explaining that granting an out-of-time appeal “restores the pendency of the direct appeal”). To be entitled to an out-of-time appeal, the defendant must file an application for a writ of habeas corpus with the clerk of the convicting court. *In re Escareno*, 297 S.W.3d 288, 289 (Tex. Crim. App. 2009); *see* TEX. CODE CRIM. PROC. ANN. art. 11.07, §§ 1, 3, 5 (West 2015). The application is then transmitted to the Texas Court of Criminal Appeals, which has sole jurisdiction to grant the relief of an out-of-time appeal. *See* TEX. CODE CRIM. PROC. ANN. art. 11.07, §§ 1, 3, 5; *Ater*, 802 S.W.2d at 243 (“We are the only court with jurisdiction in final post-conviction felony proceedings.”).

Instead of filing an application for writ of habeas corpus under article 11.07, appellant filed a motion with the trial court, requesting that it authorize out-of-time appeals. He now appeals the denial of that motion. Neither the trial court nor this Court has jurisdiction to grant the relief he requests. *See Ashorn v. State*, 77 S.W.3d 405, 409 (Tex. App.—Houston [1st Dist.] 2002, pet. ref’d); *see also Kossie v. State*, No. 01-16-00738-CR, 2017 WL 631842, at *1-2 (Tex. App.—Houston [1st Dist.] Feb. 16, 2017, no pet.) (mem. op., not designated for publication) (stating that intermediate appellate court does not have jurisdiction to grant out-of-time appeal, which must be sought through post-conviction habeas application made returnable to Texas Court of Criminal Appeals under article 11.07).

We dismiss these appeals for want of jurisdiction.

Do Not Publish
TEX. R. APP. P. 47.2(b)
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/Molly Francis/
MOLLY FRANCIS
JUSTICE



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

JUDGMENT

ANDREW PETE, Appellant

No. 05-18-00573-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F12-33559-V.
Opinion delivered by Justice Francis,
Justices Fillmore and Whitehill
participating.

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

Judgment entered June 21, 2018.



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

JUDGMENT

ANDREW PETE, Appellant

No. 05-18-00574-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F12-33560-V.
Opinion delivered by Justice Francis,
Justices Fillmore and Whitehill
participating.

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

Judgment entered June 21, 2018.



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

JUDGMENT

ANDREW PETE, Appellant

No. 05-18-00575-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F12-33561-V.
Opinion delivered by Justice Francis,
Justices Fillmore and Whitehill
participating.

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

Judgment entered June 21, 2018.