

Opinion issued August 28, 2009



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-09-00559-CR  
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**DAVID CLEO RICHARD, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 262nd District Court  
Harris County, Texas  
Trial Court Cause No. 498478**

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**MEMORANDUM OPINION**

We lack jurisdiction to hear this appeal. The trial court sentenced appellant,

David Cleo Richard, and signed a final judgment in this case on June 29, 1988.<sup>1</sup> Appellant did not file a motion for new trial, and therefore the deadline for filing notice of appeal was July 29, 1988, 30 days after sentencing. See TEX. R. APP. P. 26.2(a)(1).

On June 9, 2009, a date 7,650 days after the deadline for filing a notice of appeal, appellant filed a pro se notice of appeal. An untimely notice of appeal fails to vest the appellate court with jurisdiction to hear the case. *Slaton v. State*, 981 S.W.2d 208, 209-10 (Tex. Crim. App. 1998); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996); *Douglas v. State*, 987 S.W.2d 605, 605-06 (Tex. App.—Houston [1st Dist.] 1999, no pet.). Because appellant’s notice of appeal was untimely filed, we lack jurisdiction to hear this appeal.

Even if we were to construe appellant’s notice of appeal filed on June 9, 2009, as a motion for an out-of-time appeal, neither the trial court nor this Court has authority to grant an out-of-time appeal. The exclusive post-conviction remedy in final felony convictions in Texas courts is through a writ of habeas corpus pursuant to article 11.07 of the Code of Criminal Procedure. *Ater v. Eighth Court of Appeals*,

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<sup>1</sup> We note that the record reflects that appellant pleaded guilty with an agreed recommendation as to punishment with the State to the offense of burglary of a habitation with intent to commit theft. The trial court followed the punishment agreement and sentenced appellate to confinement for 15 years. Appellant did not give notice of appeal until June 9, 2009.

802 S.W.2d 241, 243 (Tex. Crim. App. 1991); TEX. CODE CRIM. PROC. ANN. art. 11.07 (Vernon Supp. 2008).

Accordingly, we **dismiss** the appeal for lack of jurisdiction.

We dismiss as moot any pending motions.

It is so **ORDERED**.

**PER CURIAM**

Panel consists of Justices Keyes, Hanks, and Bland.

Do not publish. TEX. R. APP. P. 47.2(b).