

Opinion issued July 21, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-00495-CR

GERARDO CARRILLO, Appellant
V.
THE STATE OF TEXAS, Appellee

**On Appeal from County Criminal Court at Law No. 8
Harris County, Texas
Trial Court Case No. 5515**

MEMORANDUM OPINION

In August 2007, a municipal court found Gerardo Carrillo guilty of failing to yield the right of way as a pedestrian, causing an accident between two cars. The court entered judgment against Carrillo for \$242, consisting of a \$200 fine and \$42

in court costs. Carrillo filed a motion for new trial, which the municipal court denied on January 23, 2008. Eight days later, Carrillo appealed to county criminal court at law number eight. *See* TEX. GOV'T CODE ANN. § 30.00014(a) (West Supp. 2009). The county criminal court affirmed the municipal court's judgment on September 4, 2008. Carrillo did not file a motion for new trial in the county criminal court. On May 22, 2011, over two and a half years after the county criminal court's judgment, Carrillo filed a notice of appeal from the judgment. *See* TEX. GOV'T CODE ANN. § 30.00027 (West Supp. 2009); TEX. CODE CRIM. PROC. ANN. art. 4.03 (West Supp. 2009).

Generally, a defendant in a criminal case must file his notice of appeal within thirty days of the date of the appealed judgment, or if a motion for new trial is filed, within ninety days of the judgment. TEX. R. APP. P. 26.2(a). There is, however, a document in the record in which Carrillo asserts that he did not receive notice of the county criminal court's judgment until May 11, 2011. Rule 4.2 of the Texas Rules of Appellate Procedure allows for additional time to file a notice of appeal when a party does not receive timely notice of a judgment. TEX. R. APP. P. 4.2. Under Rule 4.2, Carrillo's deadline for filing a notice of appeal did not begin to run from the date of the county criminal court's judgment if Carrillo did not receive notice, or have actual knowledge, of the judgment within twenty days of the date the judgment was signed. *Id.* 4.2(a)(1). Instead, Carrillo's time period for

filing his notice of appeal would run from the date on which he received notice, or acquired actual knowledge, of the judgment, except that “in no event may the period begin more than 90 days after the judgment or order was signed.” *Id.* Thus, even if we assume that Carrillo did not have notice or knowledge of the county criminal court’s judgment until May 2011, the deadline for Carrillo to timely file a notice of appeal expired in January 2009—thirty days after the ninetieth day from the date the judgment was signed. *Id.* 4.2(a)(1), 26.2(a)(1).

A timely notice of appeal is essential to this Court’s jurisdiction. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998). Because Carrillo’s notice of appeal was filed more than two and a half years after the date of the judgment from which he appeals, it was not timely, and we do not have jurisdiction over this appeal. *See Swain v. State*, 319 S.W.3d 878, 880 (Tex. App.—Fort Worth 2010, no pet.) (dismissing untimely appeal from county court at law’s judgment); *Garza v. State*, No. 14–06–00595–CR, 2006 WL 2075147, at *1 (Tex. App.—Houston [14th Dist.] July 27, 2006, no pet.) (same); *Sharp v. State*, No. 05-04-00022-CR, 2004 WL 60770, at *1 (Tex. App.—Dallas Jan. 14, 2004, no pet.) (same). We dismiss this appeal for lack of jurisdiction.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Higley and Brown.

Do not publish. TEX. R. APP. P. 47.4.