

Opinion issued June 16, 2016.



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

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NO. 01-14-00784-CR

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**RUDOLFO ESTRADA, JR., Appellant**  
**V.**  
**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 174th District Court**  
**Harris County, Texas**  
**Trial Court Case No. 1321081**

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**MEMORANDUM OPINION**

Appellant, Rudolfo Estrada, Jr., without an agreed punishment recommendation from the State, pleaded guilty to the offense of driving while intoxicated (third offense).<sup>1</sup> On September 9, 2013, the trial court sentenced

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<sup>1</sup> See TEX. PENAL CODE ANN. §§ 49.04, 49.09(b)(2) (Vernon Supp. 2015).

appellant to confinement for five years with a fine of \$500, suspended its sentence, and placed him on community supervision for five years. In March 2014, the State, alleging several violations of the conditions of appellant's community supervision, moved to revoke his community supervision. After a hearing on August 28, 2014, the trial court granted the motion and revoked his community supervision. Appellant filed a notice of appeal on September 9, 2014.

Subsequently, we abated the appeal and ordered the trial court to enter a certification of appellant's right of appeal and determine whether his trial counsel would represent him on appeal. On March 27, 2015, the trial court held a hearing and granted trial counsel's motion to withdraw. During the hearing, appellant clarified that he was attempting to appeal his underlying conviction and not the revocation of his community supervision.

We dismiss the appeal as untimely.

A defendant who is placed on community supervision may appeal his conviction only at the time that community supervision is first imposed. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 23(b) (Vernon Supp. 2015). If the defendant's community supervision is later revoked for a violation of its terms, his right of appeal is limited to the revocation. *Id.*; *see Manuel v. State*, 994 S.W.2d 658, 661 (Tex. Crim. App. 1999); *Reid v. State*, 834 S.W.2d 125, 125–26 (Tex. App.—Houston [1st Dist.] 1992, no pet.) (“The validity of the original conviction,

from which no appeal is taken, ordinarily cannot be raised on appeal from a revocation order.”).

Here, appellant, on September 9, 2014, after the revocation of his community supervision, filed a notice of appeal, attempting to challenge his September 9, 2013 conviction. Generally, a notice of appeal must be filed within thirty days after the date a sentence is imposed. TEX. R. APP. P. 26.2(a). Thus, appellant had thirty days following sentencing to file his notice of appeal. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 23(b) (Vernon Supp. 2015); *Perez v. State*, 424 S.W.3d 81, 85 (Tex. Crim. App. 2014). Because appellant’s attempt to challenge his underlying conviction is not timely, this court lacks jurisdiction to hear his appeal.

Accordingly, we reinstate and dismiss the appeal. *See* TEX. R. APP. P. 25.2(b), 26.2(a), 43.2(f). We dismiss any pending motions as moot.

**PER CURIAM**

Panel consists of Chief Justice Radack and Justices Jennings and Lloyd.

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