

Opinion issued June 23, 2016



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

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NO. 01-15-00402-CR

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**BIRSHAL DION MITCHELL, Appellant**  
**V.**  
**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 337th District Court**  
**Harris County, Texas**  
**Trial Court Case No. 586939**

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**MEMORANDUM OPINION**

In 1991, appellant, Birshal Dion Mitchell, without an agreed recommendation from the State, pleaded guilty to the felony offense of aggravated robbery.<sup>1</sup> The trial

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<sup>1</sup> See TEX. PENAL CODE ANN. § 29.03 (West 2011).

court deferred an adjudication of appellant's guilt and placed him on probation for a period of ten years. After the State moved to adjudicate guilt, the trial court found that appellant had violated the terms of his probation, adjudicated him guilty, and assessed punishment at confinement for twenty years and a \$1,000.00 fine.

In March 2015, appellant filed a pro se motion for judgment nunc pro tunc, contending that his street-time credit for time spent out of custody while on parole was not properly determined. *See Ex parte Spann*, 132 S.W.3d 390, 392 n.2 (Tex. Crim. App. 2004) ("Street-time credit refers to calendar time a person receives towards his sentence for days spent on parole or mandatory supervision."). The trial court denied the motion. Appellant filed a pro se notice of appeal.

We dismiss the appeal for want of jurisdiction.

The right to appeal in a criminal case is a statutorily created right. *See* TEX. CODE CRIM. PROC. ANN. art. 44.02 (West 2006); *Bayless v. State*, 91 S.W.3d 801, 805 (Tex. Crim. App. 2002). Generally, a criminal defendant may appeal only from a final judgment. *State v. Sellers*, 790 S.W.2d 316, 321 n.4 (Tex. Crim. App. 1990). The denial of a motion for judgment nunc pro tunc is not an appealable order. *See Desilets v. State*, No. 09-16-00104-CR, 2016 WL 3020131, at \*1 (Tex. App.—Beaumont May 25, 2016, no pet. h.) (citing *Sellers*, 790 S.W.2d at 321 n.4; *Sanchez v. State*, 112 S.W.3d 311, 311–12 (Tex. App.—Corpus Christi 2003, no pet.); *Everett v. State*, 82 S.W.3d 735, 735 (Tex. App.—Waco 2002, pet. dism'd)); *see also Abbott*

*v. State*, 271 S.W.3d 694, 697 (Tex. Crim. App. 2008) (concluding court of appeals lacked jurisdiction to decide merits of appeal of post-judgment order denying appellant's time-credit motion).

Accordingly, we dismiss this appeal for want of jurisdiction. *See* TEX. R. APP. P. 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).