

Opinion issued December 29, 2016



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

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NO. 01-16-00707-CR

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SEAN DERRICK ALLEN, Appellant

V.

THE STATE OF TEXAS, Appellee

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On Appeal from the 185th District Court  
Harris County, Texas  
Trial Court Case Nos. 1477609 and 1477610

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MEMORANDUM OPINION

Appellant, Sean Derrick Allen, without agreed punishment recommendations from the State, pleaded guilty to two felony offenses of sexual assault of a child.<sup>1</sup> The trial court found appellant guilty of each offense and assessed his punishment for each offense at confinement for five years, with the sentences to run concurrently. On August 16, 2016, appellant filed pro se notices of appeal. On August 22, 2016, the trial court signed, in each case, an “Order Granting Credit for Jail Time Nunc Pro Tunc.”

We dismiss the appeals for lack of jurisdiction.

We cannot exercise jurisdiction over an appeal without a timely filed notice of appeal. *See* TEX. R. APP. P. 26.2(a); *see also Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). A defendant’s notice of appeal is timely if filed within thirty days after the date sentence is imposed or suspended in open court or within ninety days after that date if the defendant timely files a motion for new trial. TEX. R. APP. P. 26.2(a); *see Bayless v. State*, 91 S.W.3d 801, 806 (Tex. Crim. App. 2002); *Lair v. State*, 321 S.W.3d 158, 159 (Tex. App.—Houston [1st Dist.] 2010, pet. ref’d). In each case, the trial court imposed sentence and signed the judgment of conviction on June 2, 2016. The clerk’s records filed in this Court do not reflect that appellant filed a motion for new trial. *See* TEX. R. APP. P. 21.4(a). Because timely motions for new

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<sup>1</sup> *See* TEX. PENAL CODE ANN. § 22.011(a)(2), (c)(1) (Vernon 2011).

trial were not filed, appellant's notices of appeal were due to be filed no later than July 5, 2016. *See* TEX. R. APP. P. 4.1(a), 26.2(a)(1); *Olivo*, 918 S.W.2d at 522. Appellant's notices of appeal, filed on August 16, 2016, were untimely to perfect appeals of the June 2, 2016 judgments of conviction.

After appellant filed the notices of appeal, the trial court signed the orders granting credit for jail time nunc pro tunc, which corrected appellant's sentences to reflect additional jail-time credit. *See Ex parte Ybarra*, 149 S.W.3d 147, 148 (Tex. Crim. App. 2004) (citations omitted) (stating trial court is required to grant defendant pre-sentence jail-time credit when sentence is pronounced and, if court fails to do so, court has authority to correct judgment by nunc pro tunc order to reflect appropriate time credit); *see also Blanton v. State*, 369 S.W.3d 894, 897–98 (Tex. Crim. App. 2012) (stating purpose of judgment nunc pro tunc is to correct clerical error in judgment). A judgment nunc pro tunc is an appealable order, and a defendant may appeal from the judgment within the rule 26.2 time limits. *Blanton*, 369 S.W.3d at 904. However, an appeal of a judgment nunc pro tunc is limited to issues related to the clerical errors addressed in that judgment and does not provide an opportunity to raise issues relating to the original conviction and sentence. *See, e.g., Barnett v. State*, No. 06-14-00149-CR, 2015 WL 5999663, at \*2 (Tex. App.—Texarkana July 24, 2015, pet. ref'd) (mem. op., not designated for publication); *Hill v. State*, No. 05-14-01067-CR, 2015 WL 2394099, at \*2 (Tex. App.—Dallas May

18, 2015, pet. ref'd) (mem. op., not designated for publication). Appellant's August 16, 2016 notices of appeal, filed before the trial court signed the August 22, 2016 orders, cannot be considered premature notices of appeal as to those orders because the notices of appeal do not contemplate the subsequent entry of the nunc pro tunc orders and do not show appellant's desire to appeal the orders. *See* TEX. R. APP. P. 25.2(c) (form and sufficiency of notice of appeal), 27.1(b) (premature notice of appeal); *see also* *Dennis v. State*, No. 10-16-00237-CR, 2016 WL 4150634, at \*2 (Tex. App.—Waco Aug. 3, 2016, no pet.) (mem. op., not designated for publication).

Accordingly, we dismiss the appeals for want of jurisdiction. *See* TEX. R. APP. P. 43.2(f). We dismiss all pending motions as moot.

**PER CURIAM**

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

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