

Opinion issued May 10, 2018



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

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NO. 01-17-00121-CR

NO. 01-17-00122-CR

NO. 01-17-00123-CR

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**CHRISTOPHER JAMES FIELDER, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 21st District Court  
Washington County, Texas  
Trial Court Case Nos. 17314, 17316, 17317**

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**MEMORANDUM OPINION**

Christopher James Fielder attempts to appeal from his convictions for aggravated sexual assault, assault of a family or household member by impeding breath or circulation, and assault of a family or household member with a previous

conviction. The State has moved to dismiss the appeals for lack of jurisdiction, contending that Fielder's notices of appeal were untimely. Because we agree that Fielder's notices were untimely, we grant the State's motion and dismiss the appeals.

### **BACKGROUND**

A jury found Fielder guilty of one count of aggravated sexual assault, two counts of assault of a family or household member by impeding breath or circulation, and one count of assault of a family or household member with a previous conviction. The trial court imposed separate sentences in open court and signed separate judgments of conviction on each of these four counts on December 1, 2016.

Fielder did not move for a new trial. His counsel filed a notice of appeal in January 2017. The district clerk date-stamped the notice of appeal as filed on January 5. Counsel's cover letter enclosing the notice of appeal was dated January 3. The certificate of service does not indicate the method of service to the district clerk's office, but it does affirm that the notice was sent to the State by facsimile transmission.

The State has moved to dismiss Fielder's appeals as untimely. It contends that Fielder's notice of appeal was due by January 2. Because Fielder did not file a motion for an extension of time, the State reasons, his notice was untimely and his appeals therefore must be dismissed for lack of jurisdiction.

We ordered Fielder to respond to the State’s motion to dismiss no later than March 8, 2018. We also directed him to specify the date and manner—electronic filing, mail, fax, or personal delivery—in which he sent his notice of appeal to the district clerk. Fielder has not filed a response.

## DISCUSSION

### A. Applicable law

A timely notice of appeal is necessary to invoke our appellate jurisdiction. *See Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996); *Lair v. State*, 321 S.W.3d 158, 159 (Tex. App.—Houston [1st Dist.] 2010, pet. ref’d). If an appeal is not timely perfected, then we do not obtain jurisdiction to address the merits and can take no action other than to dismiss the appeal. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (per curiam).

In a criminal case, unless the defendant files a motion for new trial, his notice of appeal is due within 30 days after sentence is imposed in open court or the trial court enters an appealable order. TEX. R. APP. P. 26.2(a). We may extend the deadline for filing a notice of appeal if and only if, within 15 days of the deadline, the defendant files a notice of appeal and a motion to extend time. *See* TEX. R. APP. P. 26.3; *Olivo*, 918 S.W.2d at 522 (timely filed motion to extend is jurisdictional).

## **B. Analysis**

As Fielder did not file a motion for new trial, his notice of appeal was due no later than 30 days after December 1, 2016, when the trial court sentenced him in open court and entered the judgments of conviction. *See* TEX. R. APP. P. 26.2(a). The 30-day deadline expired on December 31, which was a Saturday, and the deadline for filing the notice therefore became January 2, 2017. *See* TEX. R. APP. P. 4.1(a). Assuming that the date of Fielder’s cover letter—January 3—reflects the date on which he mailed his notice to the district clerk or otherwise filed it with the clerk, he filed his notice one day after the expiration of the deadline.

January 2 was not a state holiday. Filing deadlines are extended by rule if they fall on a date when the clerk’s office is closed or inaccessible, weekends, or legal holidays. *See* TEX. R. APP. P. 4.1. Although January 2, 2017 was the Monday after New Year’s Day, the State Auditor’s Office’s *Fiscal Year 2017 Holiday Schedule* reflects that it was not a state holiday; thus, Texas courts were open on January 2. Because the Court of Criminal Appeals has determined that the Government Code defines “legal holidays” for purposes of determining our appellate jurisdiction, January 2 was not a legal holiday for the purpose of extending the filing deadlines. *See* TEX. GOV’T CODE §§ 662.021, 662.003; *Mendez v. State*, 914 S.W.2d 579, 580 (Tex. Crim. App. 1996) (holding that Sections 662.021 and 662.003 exclusively determine legal holidays for purposes of computing deadlines

under appellate rules and refusing to recognize exception to express written provisions of these statutes).

In contrast to civil appeals, we cannot interpret “legal holidays” more expansively than the written provisions of the Government Code. *See Mendez*, 914 S.W.2d at 580 (rejecting *Miller Brewing Co. v. Villarreal*, 829 S.W.2d 770 (Tex. 1992) (per curiam), in which Supreme Court of Texas construed “legal holiday” more broadly). Nor do we have the authority to extend the filing deadline for a notice of appeal in ordinary criminal matters unless the defendant timely files both a notice of appeal and a motion to extend the time for filing the notice. *See Olivo*, 918 S.W.2d at 522; *Lair*, 321 S.W.3d at 159 (contrasting Texas Court of Criminal Appeals’s approach with more liberal approach of *Verburgt v. Dorner*, 959 S.W.2d 615 (Tex. 1997)).<sup>1</sup>

Fielder may seek an out-of-time appeal by application for writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure, but this relief is beyond our court’s jurisdiction on direct appeal. *See Ater v. Eighth Ct. of App.*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (Court of Criminal Appeals has exclusive authority to grant relief in post-conviction felony proceedings); *In re McAfee*, 53 S.W.3d 715, 718 (Tex. App.—Houston [1st Dist.] 2001, orig.

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<sup>1</sup> *Cf. Strange v. State*, 258 S.W.3d 184, 187 n.2 (Tex. App.—Houston [1st Dist.] 2007, pet. ref’d) (noting that *Verburgt* applies in bond forfeiture appeals, which are criminal matters but are governed by the rules applicable to civil actions).

proceeding) (“Article 11.07 contains no role for the courts of appeals; the only courts referred to are the convicting court and the Court of Criminal Appeals.”).

Accordingly, we hold that Fielder did not timely file a notice of appeal and that this jurisdictional defect requires us to dismiss his appeals for want of jurisdiction. *See Slaton*, 981 S.W.2d at 210; *Olivo*, 918 S.W.2d at 522. Accordingly, we grant the State’s motion.

### **CONCLUSION**

We dismiss Fielder’s untimely appeals for lack of jurisdiction.

Jane Bland  
Justice

Panel consists of Justices Bland, Lloyd, and Caughey.

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