

Opinion issued August 2, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00534-CR

MIKE MENDOZA JR., Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Case No. 952290**

MEMORANDUM OPINION

Appellant, Mike Mendoza Jr., attempts to appeal from the district court's November 10, 2020 order denying appellant's motion for post-conviction DNA

testing.¹ The State has filed a motion to dismiss the appeal for want of jurisdiction because appellant’s notice of appeal filed on September 29, 2021 was untimely. We grant the motion and dismiss the appeal.

An appeal from the denial of a motion for DNA testing is treated “in the same manner as an appeal of any other criminal matter, except that if the convicted person was convicted in a capital case and was sentenced to death, the appeal is a direct appeal to the court of criminal appeals.” TEX. CODE CRIM. PROC. art. 64.05.² Consequently, to appeal an order denying a motion for post-conviction DNA testing, an appellant must file a timely notice of appeal. *See Swearingen v. State*, 189 S.W.3d 779, 781 (Tex. Crim. App. 2006). Here, appellant’s notice of appeal was due thirty days after the trial court denied appellant’s motion for post-conviction DNA testing. *See* TEX. R. APP. P 26.2(a)(1).

“A timely notice of appeal is necessary to invoke a court of appeals’ jurisdiction.” *Taylor v. State*, 424 S.W.3d 39, 43–44 (Tex. Crim. App. 2014) (*citing Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998)). If an appeal is not timely filed, then a court of appeals does not obtain jurisdiction to address the merits

¹ Appellant was convicted on July 23, 2003 of the offense of murder and sentenced to life imprisonment. Our Court affirmed appellant’s conviction in 2004. *See Mendoza v. State*, No. 01-03-00783-CR, 2004 WL 2538280 (Tex. App.—Houston [1st Dist.] Nov. 10, 2004, no pet.) (mem. op., not designated for publication).

² The stated exception does not apply in this case because appellant was not convicted in a capital case and sentenced to death. TEX. CODE CRIM. PROC. art. 64.05.

of the appeal and can take no action other than dismissal of the appeal. *Slaton*, 981 S.W.2d at 210.

Appellant's September 29, 2021 notice of appeal was untimely filed over ten months after the trial court's November 10, 2020 ruling and, thus, failed to vest our Court with jurisdiction. Accordingly, we grant the State's motion and dismiss this appeal for want of jurisdiction.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Goodman and Hightower.

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