

Opinion issued October 6, 2022



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

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NO. 01-22-00469-CR

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**GREGORY GOODNIGHT, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 212th District Court  
Galveston County, Texas  
Trial Court Case No. 19-CR-1951**

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**MEMORANDUM OPINION**

Appellant, Gregory Goodnight, with an agreed punishment recommendation from the State, pleaded guilty to the felony offense of fraudulent securing of document execution.<sup>1</sup> In accordance with the plea agreement, the trial court, on

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<sup>1</sup> See TEX. PENAL CODE ANN. § 32.46(b)(7).

November 29, 2021, assessed appellant's punishment at confinement for twelve years and ordered appellant to pay restitution in the amount of \$347,121.68. Appellant filed a pro se notice of appeal on May 24, 2022.

We dismiss the appeal 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); *Castillo v. State*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2012); *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). A defendant's notice of appeal is timely if it is filed within thirty days after the date the sentence is imposed or suspended in open court, or within ninety days after the date the sentence is imposed or suspended in open court if the defendant 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). The time for filing a notice of appeal can also be extended if, within fifteen days of the deadline for filing the notice of appeal, a defendant files his notice of appeal in the trial court and a motion for extension of time that complies with Texas Rule of Appellate Procedure 10.5(b) in the appellate court. *See* TEX. R. APP. P. 10.5(b), 26.3; *Lair*, 321 S.W.3d at 159; *see also Olivo*, 918 S.W.2d at 522 (requiring both notice of appeal and motion for extension to be filed within fifteen days of original due date for notice of appeal).

The trial court signed and entered its judgment of conviction on November 29, 2021. On May 19, 2022, appellant filed a motion for new trial in the trial court. However, appellant's motion for new trial was not timely filed, and therefore did not extend his deadline to file a notice of appeal. *See* TEX. R. APP. P. 21.4 (motion for new trial in criminal case must be filed "no later than 30 days after" sentence is imposed), 26.2(a). Accordingly, any notice of appeal was due to be filed in the trial court within thirty days after the entry of the trial court's judgment, on or before December 29, 2021. *See* TEX. R. APP. P. 26.2(a).

On May 24, 2022, appellant filed his pro se notice of appeal from the trial court's November 29, 2021 judgment. Because appellant's notice of appeal is not timely filed, we lack jurisdiction to address the merits of his appeal and can take no other action than to dismiss the appeal. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998).

Further, the record reflects that appellant voluntarily pleaded guilty to the felony offense of fraudulent securing of document execution. In a plea-bargain case, a defendant may only appeal those matters that were raised by written motion filed and ruled on before trial or after getting the trial court's permission to appeal. TEX. CODE CRIM. PROC. ANN. art. 44.02; TEX. R. APP. P. 25.2(a)(2). As a part of his guilty plea, appellant and his counsel signed a document titled, "Written Plea Admonishments-Waivers-Stipulations," in which appellant acknowledged that his

guilty plea was “voluntarily and understandingly entered” and that where “the punishment assessed [by the trial court] d[id] not exceed the agreement between [appellant] and [the State], the [trial] court must give permission before [appellant] can appeal on any matter in the case except for those matters raised by written motion and ruled on prior to trial.” Appellant further represented that, as a part of his guilty plea, he “also waive[d] and [gave] up the 30 days provided in which to file a . . . [n]otice of [a]ppeal.”

Additionally, when a trial court enters a judgment of guilt, it must certify whether the defendant has a right of appeal. *See* TEX. R. APP. P. 25.2(a)(2). Here, the trial court’s certification is included in the appellate record. The certification states that appellant “waived [his] right to appeal” and that this was “a plea-bargain case[] and [appellant] ha[d] NO right of appeal.” *See Harris v. State*, No. 01-19-00660-CR, 2020 WL 717544, at \*1 (Tex. App.—Houston [1st Dist.] Feb. 13, 2020, no pet.) (mem. op., not designated for publication) (dismissing appeal after concluding trial court certification that “marked the boxes for both waiver of the right to appeal and that this [was] a plea-bargain case and appellant ha[d] no right of appeal” was effective and was supported by the record). Here, the record is clear that appellant voluntarily waived his right of appeal and the trial court did not grant appellant permission to appeal. Because appellant has no right of appeal, we must

dismiss his appeal. *See Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006).

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

**PER CURIAM**

Panel consists of Justices Kelly, Rivas-Molloy, and Guerra.

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