

Motions Denied; Opinion Withdrawn; Appeal Dismissed and Substitute Memorandum Opinion filed April 5, 2016.



**In The
Fourteenth Court of Appeals**

NO. 14-16-00077-CR

PHILLIP WILLIAM ARMS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 400th District Court
Fort Bend County, Texas
Trial Court Cause No. 15-DCR-069939**

M E M O R A N D U M O P I N I O N

Appellant's motion for rehearing is denied and his motion for en banc reconsideration is denied as moot. We withdraw our memorandum opinion of February 9, 2016, and issue this substitute memorandum opinion.

After a guilty plea pursuant to a plea-bargain agreement with the State, appellant was convicted of the offense of assault—bodily injury of a family member, two times within 12 months. On August 28, 2015, the trial court followed

the recommendation in the plea-bargain agreement by deferring a finding of guilt and placing appellant on community supervision for eight years.¹ Appellant filed a motion to withdraw his plea on October 7, 2015, which the trial court denied. On November 10, 2015, appellant filed a motion to reconsider the order denying his motion to withdraw his guilty plea, which the trial court also denied. He filed his notice of appeal on February 1, 2016.

This court's recent opinion in *Rabbani v. State*, Nos. 14-15-00862-CR and 14-15-00863-CR, ___ S.W.3d ___, 2016 WL 1043115 (Tex. App.—Houston [14th Dist.] Mar. 15, 2016, n.p.h.) (per curiam) is instructive. In *Rabbani*, the trial court signed orders of deferred adjudication based on the defendant's guilty pleas. *Id.* at *1. The defendant filed motions to withdraw his guilty pleas, which the trial court denied. *Id.* The defendant appealed those orders, and the State moved to dismiss the appeals for lack of jurisdiction. *Id.* This court granted the motions to dismiss, concluding the defendant was not seeking to appeal from a final judgment of conviction and an order denying a motion to withdraw a guilty plea is not independently appealable. *Id.* at *2-3.

As in *Rabbani*, the trial court in this case signed an order of deferred adjudication but has not adjudicated appellant's guilt. Therefore, because there is no final judgment of conviction from which appellant could appeal and a motion for new trial could not extend the time to appeal the order of deferred adjudication, appellant's notice of appeal was due 30 days after the day his sentence was imposed. Tex. R. App. P. 26.2(a); *Garcia v. State*, 29 S.W.3d at 901.

¹ Appellant filed a motion for new trial on September 24, 2015, but he withdrew that motion on October 7, 2015. Even if he had not withdrawn it, appellant's motion for new trial would not extend the time to appeal the order of deferred adjudication. *Garcia v. State*, 29 S.W.3d 899, 901 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

Also as in *Rabbani*, the appellant filed a motion to withdraw his guilty plea. An order denying a motion to withdraw a guilty plea is not a separately appealable order. *See Rabbani*, 2016 WL 1043115, at *2–3.

A notice of appeal which complies with the requirements of Rule 26 is essential to vest the court of appeals with jurisdiction. *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998). If an appeal is not timely perfected, a court of appeals does not obtain jurisdiction to address the merits of the appeal. Under those circumstances it can take no action other than to dismiss the appeal. *Id.*

Accordingly, the appeal is **DISMISSED**.

PER CURIAM

Panel consists of Justices Jamison, Donovan, and Brown.
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