

**Appeal Dismissed and Memorandum Opinion filed February 9, 2016.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-16-00077-CR**

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**PHILLIP WILLIAM ARMS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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

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

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. Appellant filed a motion for new trial on September 24, 2015, but he withdrew that motion on October 7, 2015. He filed a motion to withdraw his plea on October 7, 2015. The

trial court denied his motion on October 29, 2015. On November 10, 2015, appellant filed a motion to reconsider the order denying his motion to withdraw his guilty plea. The trial court denied the motion to reconsider on January 21, 2016. He filed his notice of appeal on January 28, 2016. The notice stated he was appealing “the judgment of conviction and sentence.” He filed an amended notice of appeal on February 1, 2016. The amended notice stated he was appealing the denial of his motion to withdraw his guilty plea.

A defendant’s notice of appeal must be filed within 30 days after sentence is imposed when the defendant has not filed a timely motion for new trial. Tex. R. App. P. 26.2(a)(1). If the defendant files a motion for new trial, the notice of appeal must be filed within 90 days after sentence is imposed. Tex. R. App. P. 26.2(a)(2).

Because there is no finding or verdict of guilt in a deferred adjudication, a motion for new trial is not permissible when a defendant is placed on deferred adjudication. *Donovan v. State*, 68 S.W.3d 633, 636 (Tex. Crim. App. 2002). Even if he had not withdrawn it, appellant’s motion for new trial would not extend the time to appeal. *Garcia v. State*, 29 S.W.3d 899, 901 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

A motion to withdraw a guilty plea does not extend the time to perfect an appeal. *See* Tex. R. App. P. 26.2(a). An order denying a motion to withdraw a guilty plea is not a separately appealable order. *See generally* Tex. Code Crim. Proc. Ann. art. 44.02.

Therefore, appellant’s notice of appeal was due 30 days after August 28, 2015, the day his sentence was imposed. Tex. R. App. P. 26.2(a)(1).

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.*

Furthermore, the record reflects that appellant waived his right of appeal. Appellant waived the right of appeal knowing with certainty the punishment that would be assessed. *See Blanco v. State*, 18 S.W.3d 218, 219 (Tex. Crim. App. 2000) (holding waiver of right to appeal is valid if appellant knows with certainty the punishment that will be assessed). Because appellant pleaded guilty and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by appellant, appellant has the right to appeal only: (A) those matters that were raised by written motion filed and ruled on before trial, or (B) after receiving the trial court's permission to appeal. Tex. R. App. P. 25.2(a)(2); *Kennedy v. State*, 297 S.W.3d 338, 340–41 (Tex. Crim. App. 2009). The record does not reflect the trial court's permission to appeal or any pretrial motions that could be appealed.

Accordingly, the appeal is **DISMISSED**.

PER CURIAM

Panel consists of Justices Jamison, Donovan, and Brown.  
Do Not Publish — Tex. R. App. P. 47.2(b).