

Dismissed and Memorandum Opinion filed May 18, 2017.



In The

Fourteenth Court of Appeals

NO. 14-17-00338-CR

ALEXI HINOJOSA MATOS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause No. 1356238**

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

Following his guilty plea, appellant was convicted of possession with intent to manufacture or deliver at least 400 grams of cocaine. The trial court sentenced appellant to 25 years' imprisonment on March 8, 2017. No timely motion for new trial was filed. Therefore, appellant's notice of appeal was due April 7, 2017. *See* Tex. R. App. P. 26.2(a)(1) (notice of appeal must be filed within 30 days after sentence is imposed if defendant has not filed motion for new trial).

A court of appeals may grant an extension of time if, within 15 days after the

deadline for filing the notice of appeal, appellant files (a) the notice of appeal in the trial court, and (b) a motion for extension in the court of appeals. *See* Tex. R. App. P. 26.3; *see also* Tex. R. App. P. 10.5(b)(2) (governing motion for extension of time to file notice of appeal). The fifteenth day after April 7, 2017, was Saturday, April 22, 2017. Therefore, appellant had until Monday, April 24, 2017, to file the notice of appeal and a motion for extension. *See* Tex. R. App. P. 4.1(a) (if filing deadline falls on Saturday, Sunday, or legal holiday, deadline is extended to next day that is not Saturday, Sunday, or legal holiday).

Appellant filed his notice of appeal on April 24, 2017. He did not file a motion for extension of time to file the notice of appeal.

In civil appeals, a request for extension is implied if a notice of appeal is filed within 15 days after the deadline. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). However, the Court of Criminal Appeals has declined to follow *Verburgt*. *See Olivo v. State*, 918 S.W.2d 519, 523 (Tex. Crim. App. 1996).

A timely notice of appeal is essential to vest the court of appeals with jurisdiction. *Olivo*, 918 S.W.2d at 522. When a notice of appeal, but no motion for extension of time, is filed within the 15-day period, the court of appeals can take no action other than to dismiss the appeal for lack of jurisdiction. *See id.*

Accordingly, the appeal is DISMISSED.

PER CURIAM

Panel consists of Justices Christopher, Brown, and Wise.
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