

*Court Of Appeals  
Fourth Court of Appeals District of Texas  
San Antonio*



**MEMORANDUM OPINION**

No. 04-08-00685-CR

James R. **HIATT**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 144th Judicial District Court, Bexar County, Texas  
Trial Court No. 2006-CR-2741  
Honorable Catherine Torres-Stahl, Judge Presiding

PER CURIAM

Sitting: Phylis J. Speedlin, Justice  
Rebecca Simmons, Justice  
Steven C. Hilbig, Justice

Delivered and Filed: October 8, 2008

DISMISSED FOR WANT OF JURISDICTION

Appellant was sentenced on May 30, 2008. A timely motion for new trial was filed, and therefore appellant's notice of appeal was due to be filed on August 28, 2008; a motion for extension of time to file a notice of appeal was due on September 12, 2008. *See* TEX. R. APP. P. 26.2(a), 26.3. Appellant filed his notice of appeal in the trial court on September 4, 2008, but did not file a motion for extension of time to file a late notice of appeal in this Court. *See* TEX. R. APP. P. 26.3. When a notice of appeal and a motion for extension of time are not filed within the fifteen-day grace period

after the deadline for filing notice of appeal, the appellate court lacks jurisdiction. TEX. R. APP. P. 26.3; *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996); *see also Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (out-of-time appeal from final felony conviction may be sought by filing a writ of habeas corpus pursuant to article 11.07 of the Texas Code of Criminal Procedure). We issued an order on September 19, 2008 directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellant's counsel responded in writing and agreed that this Court lacks jurisdiction over this appeal. TEX. R. APP. P. 26.3; *Olivo*, 918 S.W.2d at 522. Accordingly, the appeal is dismissed for lack of jurisdiction.

PER CURIAM

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