

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



**MEMORANDUM OPINION**

No. 04-09-00473-CR

Robert **MARTINEZ**, Jr.,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 175th Judicial District Court, Bexar County, Texas  
Trial Court No. 2009-CR-4298W  
Honorable Catherine Torres Stahl, Judge Presiding

PER CURIAM

Sitting: Catherine Stone, Chief Justice  
Karen Angelini, Justice  
Marialyn Barnard, Justice

Delivered and Filed: September 9, 2009

DISMISSED FOR LACK OF JURISDICTION

The trial court imposed sentence on April 13, 2009. Because appellant did not file a motion for new trial, the notice of appeal was due to be filed May 13, 2009. TEX. R. APP. P. 26.2(a)(1). A motion for extension of time to file the notice of appeal was due on May 28, 2009. TEX. R. APP. P. 26.3. Appellant filed a notice of appeal on July 30, 2009, and appellant did not file a motion for extension of time.

A timely notice of appeal is necessary to invoke a court of appeals' jurisdiction. *See Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). A late notice of appeal may be considered timely so as to invoke a court of appeals' jurisdiction if (1) it is filed within fifteen days of the last day allowed for filing, (2) a motion for extension of time is filed in the court of appeals within fifteen days of the last day allowed for filing the notice of appeal, and (3) the court of appeals grants the motion for extension of time. *See id.* Appellant's notice of appeal was not filed within fifteen days of the last day allowed for filing, and no motion for extension of time was filed.

On August 11, 2009, appellant was ordered to show cause in writing why this appeal should not be dismissed for lack of jurisdiction. *See id.*; *see also Ater v. Eighth Court of Appeals*, 802 S.W.2d 241 (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). On August 17, 2009, appellant's attorney filed written notice with this court that counsel has reviewed the record and "can find no right of appeal for Appellant." Because the appeal was not timely filed, the appeal is dismissed for lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH