

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



MEMORANDUM OPINION

No. 04-10-00136-CR

Matias **CERDA**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 226th Judicial District Court, Bexar County, Texas
Trial Court No. 2005CR5557W
Honorable Sid L. Harle, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Justice
Phylis J. Speedlin, Justice
Rebecca Simmons, Justice

Delivered and Filed: March 10, 2010

DISMISSED FOR LACK OF JURISDICTION

After revoking appellant's probation, the trial court imposed sentence in the underlying cause on September 17, 2008. No timely motion for new trial having been filed, appellant's notice of appeal was due to be filed no later than October 17, 2008. *See* TEX. R. APP. P. 26.2. Appellant's notice of appeal was not filed with the trial court clerk until January 25, 2010. This court lacks jurisdiction over an appeal of a criminal conviction in the absence of a timely, written notice of appeal. *See 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 (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); *Apt v. State*, No. 04-03-00885-CR, 2004 WL 730832, at *1 (Tex. App.—San Antonio Apr. 7, 2004, no pet.) (unlike rule in civil cases, notice of appeal filed with appellate court in criminal case is not deemed filed the same day with the trial court clerk) (not designated for publication). Accordingly, this appeal is dismissed for lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH