

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



MEMORANDUM OPINION

No. 04-10-00355-CR

Edward Gerard **VALDEZ**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 144th Judicial District Court, Bexar County, Texas
Trial Court No. 2008-CR-10525
Honorable Catherine Torres-Stahl, Judge Presiding

PER CURIAM

Sitting: Rebecca Simmons, Justice
Steven C. Hilbig, Justice
Marialyn Barnard, Justice

Delivered and Filed: July 14, 2010

DISMISSED FOR LACK OF JURISDICTION

Appellant was sentenced on July 27, 2009. A timely motion for new trial having been filed, appellant's notice of appeal was due to be filed no later than October 26, 2009. *See* TEX. R. APP. P. 26.2. The notice of appeal was not filed until April 28, 2010. No motion for extension of time was filed. *See* TEX. R. APP. P. 26.3. This court lacks jurisdiction to consider an appeal if a timely notice of appeal has not been filed. *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).

On May 11, 2010, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellant responded, agreeing that the appeal was untimely filed. Accordingly, this appeal is dismissed for lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH