



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00213-CR

John Jerry **GARZA**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the County Court at Law No. 6, Bexar County, Texas
Trial Court No. 527018
Honorable Wayne A. Christian, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: June 14, 2017

DISMISSED FOR LACK OF JURISDICTION

The trial court imposed sentence on John Jerry Garza on January 31, 2017. Garza did not file a motion for new trial. The deadline to file a notice of appeal was therefore March 2, 2017, thirty days after sentence was imposed. TEX. R. APP. P. 26.2(a)(1). Garza's notice of appeal states it was filed on March 10, 2017, and it was not file-stamped by the clerk's office until April 5, 2017. Appellant did not file a timely motion for extension of time to file the notice of appeal. *See* TEX. R. APP. P. 26.3.

On May 2, 2017, we notified Garza that the record raised an issue regarding our jurisdiction over the appeal. We ordered Garza to file a response by May 22, 2017, showing the appeal was timely filed. Garza did not respond to our order.

Because the notice of appeal in this case was not timely filed, we lack jurisdiction to entertain the appeal. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (holding that if appeal is not timely perfected, court of appeals does not obtain jurisdiction to address merits of appeal, and court may take no action other than to dismiss appeal; court may not suspend rules to alter time for perfecting appeal); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Garza's remedy is to seek an out-of-time appeal by filing an application for writ of habeas corpus. *See* TEX. CODE CRIM. PROC. ANN. arts. 11.05, 11.09 (West 2015); *Rodriguez v. Court of Appeals, Eighth Supreme Judicial Dist.*, 769 S.W.2d 554 (Tex. Crim. App. 1989); *State ex rel. Rodriguez v. Onion*, 741 S.W.2d 433 (Tex. Crim. App. 1987).

We dismiss this appeal for lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH