



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00376-CR

The **STATE** of Texas,
Appellant

v.

Francisco **NIETO** Jr.,
Appellee

From the 216th Judicial District Court, Gillespie County, Texas
Trial Court No. 5952
Honorable N. Keith Williams, Judge Presiding

PER CURIAM

Sitting: Marialyn Barnard, Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: October 11, 2017

MOTION GRANTED; DISMISSED FOR WANT OF JURISDICTION

This is an attempted appeal by the State of Texas from a trial court's order granting appellee Francisco Nieto Jr.'s motion to dismiss the indictment based on federal constitutional speedy trial grounds. *See* TEX. CODE CRIM. PROC. ANN. art. 44.01(a) (West 2006). The order from which the State attempts to appeal was signed on May 4, 2017. Therefore, the State's notice of appeal was due to be filed on May 24, 2017, twenty days from the date the order was signed. *See* TEX. R. APP. P. 26.2(b). However, the State did not file its notice of appeal until May 26, 2017. Moreover, the

State did not timely file a motion to extend time to file the notice of appeal, which would have been due on June 8, 2017. TEX. R. APP. P. 26.3.

Because the notice of appeal appeared to be untimely filed, we ordered the State to show cause why this appeal should not be dismissed for lack of jurisdiction. The State was ordered to respond by September 12, 2017, and failed to respond. Subsequently, on September 28, 2017, appellee filed a motion to dismiss this appeal, contending the State did not timely file its notice of appeal and the State failed to respond to this court's show cause order.

Based on the foregoing, we grant the appellee's motion to dismiss and dismiss this appeal for lack of jurisdiction.

PER CURIAM

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