



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00399-CR

Juan **RIPPSTEIN**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 187th Judicial District Court, Bexar County, Texas
Trial Court No. 2015CR9366W
Honorable Steve Hilbig, Judge Presiding

PER CURIAM

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

Delivered and Filed: August 23, 2017

APPEAL DISMISSED FOR WANT OF JURISDICTION

The trial court imposed sentence on May 2, 2017, and appellant did not file a motion for new trial. Accordingly, the deadline for filing a notice of appeal was June 1, 2017. *See* TEX. R. APP. P. 26.2(a)(1). However, appellant did not file his notice of appeal until June 19, 2017.¹ Appellant did not file a timely motion for extension of time to file the notice of appeal; rather, the

¹ We construe appellant's request for appointed appellate counsel as his notice of appeal.

request to file a late notice of appeal was also filed on June 19, 2017. *See* TEX. R. APP. P. 26.3. The record includes an envelope post-marked June 19, 2017.²

Because the notice of appeal appeared untimely, we issued a show cause order on June 29, 2017, ordering appellant to show cause in writing why this appeal should not be dismissed for want of jurisdiction. Appellant's appointed counsel filed two responses. In the responses, counsel asserts the notice of appeal is timely because the trial court "signed" an amended judgment on May 16, 2017.

When a defendant appeals a judgment of conviction, the deadline for filing a notice of appeal runs from the date sentenced is imposed or suspended in open court, not from the date the judgment is signed. *Blanton v. State*, 369 S.W.3d 894, 902 (Tex. Crim. App. 2012) (citing TEX. R. APP. P. 26.2(a)(1)). In the absence of a timely filed motion for new trial, a notice of appeal from a judgment of conviction must be filed in the appellate court within thirty days of the date sentence is imposed. *See* TEX. R. APP. P. 26.2(a)(1).

Here, the record shows sentence was imposed on May 2, 2017. The trial court did indeed sign an amended judgment on May 16, 2017, but as noted above, the deadline for filing a notice of appeal does not run from the date a judgment of conviction is signed, but from the date sentence was imposed. *See Blanton*, 369 S.W.3d at 902. Moreover, the amended judgment signed by the trial court on May 16, 2017, and relied upon by appellant for purposes of establishing the court's jurisdiction in this appeal, was from the September 10, 2015 judgment, which granted appellant probation pursuant to a plea agreement. The September 10, 2015 judgment was not subject to

² The envelope appears in the record after appellant's motion for appointment of counsel on appeal and motion to file late notice of appeal, which were both file-stamped June 19, 2017. Thus, we presume these documents were contained in the envelope post-marked June 19, 2017. We recognize that the certificate of service attached to each of the motions states they were transmitted to the Bexar County District Attorney's Office on June 15, 2017. However, there is no statement in either certificate of service establishing when the documents were transmitted to the district clerk's office.

appeal, as the trial court's September 10, 2015 certification stated, because it was a plea bargain case in which appellant pled guilty or nolo contendere and the punishment imposed did not exceed the punishment recommended by the State and agreed to by appellant. *See* TEX. R. APP. P. 25.2(a)(2). The May 2, 2017, judgment, which is the judgment that is the subject of the instant appeal, revoked appellant's probation and imposed a sentence of three years. It is this judgment from which appellant appealed, and May 2, 2017, was the date from which the deadline for filing a notice of appeal is calculated. *See* TEX. R. APP. P. 26.2(a)(1).

The timely filing of a written notice of appeal is a jurisdiction prerequisite. *Castillo v. State*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2010). In the absence of a timely filed notice of appeal, we have no option but to dismiss the appeal for want of jurisdiction. *Id.* Accordingly, because the record before this court establishes the notice of appeal in this case was not timely filed, there was no timely filed motion for extension of time, and counsel has failed to provide any documentation to the contrary, we lack jurisdiction to entertain the appeal. *See Blanton*, 369 S.W.3d at 902; *Castillo*, 369 S.W.3d at 198; *see also Ater v. Eighth Court of Appeals*, 802 S.W.2d 241 (Tex. Crim. App. 1991) (explaining that writ of habeas corpus pursuant to article 11.07 of the Texas Code of Criminal Procedure governs out-of-time appeals from felony convictions). Accordingly, we dismiss this appeal for want of jurisdiction.

PER CURIAM

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