



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-17-00540-CR

Troy **MCCULLOUGH** Jr.,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 399th Judicial District Court, Bexar County, Texas  
Trial Court No. 2017CR5444  
Honorable Frank J. Castro, Judge Presiding

PER CURIAM

Sitting: Patricia O. Alvarez, Justice  
Luz Elena D. Chapa, Justice  
Irene Rios, Justice

Delivered and Filed: October 11, 2017

DISMISSED FOR WANT OF JURISDICTION

In the matter underlying this appeal, Appellant Troy McCullough Jr. was indicted for possession of a controlled substance in an amount less than one gram, with an habitual offender enhancement allegation. Appellant pled nolo contendere to the charge. He was admonished that the punishment range was 2–20 years’ confinement and a fine of up to \$10,000.00. Appellant signed a plea bargain agreement that (1) acknowledged Appellant had been convicted of two or more felonies for enhancement under section 12.42 of the Texas Penal Code, (2) recommended a fine of \$1,500.00, and (3) stated it was “an open plea to the court.”

On June 9, 2017, the trial court sentenced Appellant to confinement for fifteen years in the Texas Department of Criminal Justice—Institutional Division and a fine of \$1,500.00. The sentence and fine were within the terms of the plea bargain agreement. The trial court certified that Appellant was sentenced under a plea bargain agreement and had no right of appeal.

On August 2, 2017, acting pro se, Appellant filed a notice of appeal.

Subsequently, this court advised Appellant that his notice of appeal appeared to be untimely, and we ordered Appellant to show cause in writing by October 3, 2017, why this appeal should not be dismissed for want of jurisdiction. In his timely response to our order, Appellant acknowledged his notice of appeal was late but asked this court to allow him to appeal his sentence.

Appellant did not file a motion for new trial or a motion for extension of time to file a notice of appeal. *See* TEX. R. APP. P. 26.2(a)(2), 26.3. A timely notice of appeal is necessary to invoke a court of appeals' jurisdiction. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Appellant's notice of appeal was due on July 10, 2017, or the notice of appeal and a motion for extension of time to file the notice of appeal were due not later than July 25, 2017. Appellant did not file a motion for extension of time to file a notice of appeal, and his notice of appeal was not filed until August 2, 2017.

Appellant's August 2, 2017 notice of appeal was not timely filed and did not invoke this court's appellate jurisdiction. *See* TEX. R. APP. P. 26.2(a)(2); *Olivo*, 918 S.W.2d at 522. We dismiss this appeal for want of jurisdiction. *See Olivo*, 918 S.W.2d at 522; *see also Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (stating that an out-of-time appeal from a 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).

PER CURIAM

DO NOT PUBLISH