



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00861-CR

Matthew David **KIRK**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 216th Judicial District Court, Kerr County, Texas
Trial Court No. A12604
Honorable N. Keith Williams, Judge Presiding

PER CURIAM

Sitting: Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: March 7, 2018

DISMISSED FOR WANT OF JURISDICTION

The trial court imposed its judgment on October 19, 2017. Because appellant did not file a motion for new trial, the notice of appeal was due to be filed on November 20, 2017. TEX. R. APP. P. 26.2(a)(1). A motion for extension of time to file the notice of appeal was due on December 5, 2017. TEX. R. APP. P. 26.3. Appellant did not file his notice of appeal until December 4, 2017, and failed to file a motion for extension of time. On January 4, 2018, this court issued an order directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

In response, appellant filed a written “motion for continuance” which did not resolve the jurisdictional defect.

A late notice of appeal invokes the appellate court’s jurisdiction in a criminal case only if (1) it is filed within fifteen days of the last day allowed for filing the notice of appeal, (2) a motion for extension of time is filed in the court of appeals within the fifteen-day grace period, and (3) the court of appeals grants the motion for extension of time. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Here, the notice of appeal was filed within the fifteen-day grace period, but it was not accompanied by a motion for extension of time. Accordingly, this appeal is dismissed for lack of jurisdiction. *Id.*

PER CURIAM

DO NOT PUBLISH