



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00376-CR

Rodolfo **AGUILLON**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 227th Judicial District Court, Bexar County, Texas
Trial Court No. 2012CR4534
Honorable Philip A. Kazen, Jr., Judge Presiding

PER CURIAM

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

Delivered and Filed: August 29, 2018

DISMISSED FOR WANT OF JURISDICTION

On June 4, 2018, appellant filed a pro se “Motion for Direct Appeal,” stating he was appealing errors that could have changed the outcome of his case. In his “Motion for Direct Appeal,” appellant references his conviction and sentence in Cause No. 2012 CR 4534. Thereafter, the clerk’s record was filed. The clerk’s record does not contain a judgment of conviction. Rather, the only order included in the clerk’s record is an order denying a “Motion for Shock Probation by Defendant” dated January 6, 2014. Accordingly, it appeared appellant sought to appeal the trial court’s order denying his motion for shock probation.

In general, we have jurisdiction to consider an appeal in a criminal case only when there has been a judgment of conviction. *Apolinar v. State*, 820 S.W.2d 792, 794 (Tex. Crim. App. 1991). The rules of appellate procedure further provide that a criminal defendant has the right to appeal a judgment of guilt or other appealable order. *See* TEX. R. APP. P. 25.2(a)(2). And although there are some limited exceptions that allow for the appeal of an interlocutory order, the denial of a motion for shock probation is not an appealable order. *See Houlihan v. State*, 579 S.W.2d 213, 215-16 (Tex. Crim. App. 1979); *Dodson v. State*, 988 S.W.3d 833, 834 (Tex. App.—San Antonio 1999, no pet.) (holding that appellate court lacked jurisdiction to hear an appeal from the denial of a motion for shock probation); *but see Shortt v. State*, 539 S.W.3d 321, 327 (Tex. Crim. App. 2018) (holding a defendant may appeal a ruling that grants a motion for shock probation).

Moreover, appellant's pro se notice of appeal was filed more than ninety days after the trial court's ruling. A defendant's notice of appeal must be filed within thirty days after an appealable order has been signed when a motion for new trial has not been executed. TEX. R. APP. P. 26.2. In the event a motion for new trial is filed, then the notice of appeal must be filed within ninety days. *Id.* Here, the order denying his motion for shock probation was signed on January 6, 2014, and no motion for new trial was filed. Accordingly, his notice of appeal would have been due February 5, 2014; however, he did not file his notice of appeal until over four years later on June 4, 2018. *See id.*

Because it appeared we lacked jurisdiction to consider his appeal, we ordered appellant to file in this court, on or before August 13, 2018, a response showing cause why this appeal should not be dismissed for want of jurisdiction. We also advised appellant that if no satisfactory response was filed within the time provided, we would dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(c).

Appellant has not filed a response showing cause why this appeal should not be dismissed for want of jurisdiction. Accordingly, we dismiss this appeal for want of jurisdiction.

PER CURIAM

DO NOT PUBLISH