



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00449-CR

Alberto M. **LÓPEZ**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 175th Judicial District Court, Bexar County, Texas
Trial Court No. 2010CR5048
Honorable Catherine Torres-Stahl, Judge Presiding

PER CURIAM

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

Delivered and Filed: August 8, 2018

DISMISSED FOR WANT OF JURISDICTION

In 2012, Appellant Alberto M. López pled nolo contendere to the charge of injury to a child fourteen-years-of-age or younger, knowingly causing serious bodily injury. *See* TEX. PENAL CODE ANN. § 22.04(a)(1) (West Supp. 2017). The trial court fined Appellant \$1,500.00 and sentenced him to confinement in the Texas Department of Criminal Justice—Institutional Division for fifteen years. The trial court imposed the sentence on July 27, 2012.

The record indicates Appellant did not timely file a motion for new trial or any other postjudgment motion that would extend the appellate timetable. *See* TEX. R. APP. P. 22.5, 26.2(a).

Appellant's notice of appeal was due on August 27, 2012. *See* TEX. R. APP. P. 26.2(a). Appellant's notice of appeal with a motion for extension of time to file the notice of appeal was due not later than September 10, 2012. *See* TEX. R. APP. P. 26.3.

On June 15, 2018, Appellant filed a "Request for a Certificate of Appealability" and stated "[n]ew evidence has come into being since my conviction, and I would like a chance to argue it." We cannot grant Appellant's request for a direct appeal.

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). Absent a timely motion for new trial, a defendant's notice of appeal is timely filed if it is filed within thirty days after (1) the day sentence is imposed or suspended in open court, or (2) the day the trial court enters an appealable order. *See* TEX. R. APP. P. 26.2; *Olivo*, 918 S.W.2d at 522. In this case, the appellate record shows, and Appellant's court-appointed counsel agrees, that Appellant's notice of appeal was not timely filed.

A late notice of appeal may be considered timely and invoke a court of appeals' jurisdiction if it meets the following requirements:

- (1) it is filed within fifteen days of the last day allowed for filing,
- (2) a motion for extension of time is filed in the court of appeals within fifteen days of the last day allowed for filing the notice of appeal, and
- (3) the court of appeals grants the motion for extension of time.

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).

Here, Appellant's years-late notice of appeal does not meet the requirements to invoke this court's jurisdiction. We dismiss this appeal for want of jurisdiction.

PER CURIAM

DO NOT PUBLISH