



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

Nos. 04-19-00009-CR; 04-19-00010-CR; 04-19-00011-CR & 04-19-00012-CR

Joshua Jakob **SMITH**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 216th Judicial District Court, Gillespie County, Texas
Trial Court Nos. DC-6453; DC-6454; A-17272 & A-17273
Honorable N. Keith Williams, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: February 20, 2019

DISMISSED FOR LACK OF JURISDICTION

On January 7, 2019, appellant filed a motion for extension of time to file a notice of appeal referring to the following trial court cause numbers: (1) DC-6453, 216th District Court, Gillespie County; (2) DC-6454, 216th District Court, Gillespie County; (3) A-17272, 216th District Court, Kerr County; and (4) A-17273, 216th District Court, Kerr County. In the motion, appellant stated his motion for new trial in each of the trial court cause numbers was denied on December 10, 2018.

Based on information provided by the trial court clerk, it appears the trial court imposed sentence in DC-6453 and DC-6454 on September 24, 2018, and in A-17272 and A-17273 on September 26, 2018. Assuming a timely motion for new trial was filed, the notice of appeal was

due to be filed in DC-6453 and DC-6454 on December 24, 2018, and in A-17272 and A-17273 on December 26, 2018. TEX. R. APP. P. 26.2(a)(1). A motion for extension of time to file the notice of appeal in DC-6453 and DC-6454 was due to be filed on January 8, 2019, and in A-17272 and A-17273 on January 10, 2019. TEX. R. APP. P. 26.3.

The trial court clerk informed the court that appellant had not filed a notice of appeal in any of the underlying causes. As previously noted, appellant filed his motion for extension of time on January 7, 2019.

A timely notice of appeal is necessary to invoke a court of appeals' jurisdiction. *See Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). A late notice of appeal may be considered timely so as to invoke a court of appeals' jurisdiction if (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. *See id.*

Because appellant failed to file a notice of appeal in the trial court cause numbers, and the deadline for filing a late notice of appeal has passed, this court questioned whether appellant can invoke this court's jurisdiction. Accordingly, appellant was ordered to show cause in writing by February 7, 2019 why these appeals should not be dismissed for lack of jurisdiction. *See id.*; *see also Ater v. Eighth Court of Appeals*, 802 S.W.2d 241 (Tex. Crim. App. 1991) (out-of-time appeal from 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). Appellant did not respond to this court's order. Because appellant did not file a notice of appeal in these appeals, the appeals are dismissed for lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH