Fourth Court of Appeals

San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00307-CR

Justin Dallas **ARRIOLA**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 38th Judicial District Court, Uvalde County, Texas
Trial Court No. 2012-08-12028-CR
Honorable Camile Glasscock Dubose, Judge Presiding

PER CURIAM

Sitting:　　　Sandee Bryan Marion, Chief Justice
　　　　　　　Rebeca C. Martinez, Justice
　　　　　　　Liza A. Rodriguez, Justice

Delivered and Filed: September 2, 2020

DISMISSED FOR LACK OF JURISDICTION

　　　The trial court imposed sentence on April 8, 2020. Because appellant did not file a motion

for new trial, the notice of appeal was due to be filed on May 8, 2020. TEX. R. APP. P. 26.2(a)(1).

A motion for extension of time to file the notice of appeal was due on May 25, 2020. TEX. R. APP.

P. 26.3. Appellant did not file his notice of appeal until June 9, 2020. Appellant also filed a motion

for extension of time to file his notice of appeal on June 9, 2020.

　　　"A timely notice of appeal is necessary to invoke the jurisdiction of this Court." *Taylor v.*

State, 424 S.W.3d 39, 43 (Tex. Crim. App. 2014). "A defendant's notice of appeal is timely if filed

within thirty days after the day sentence is imposed or suspended, or within ninety days after sentencing if the defendant timely files a motion for new trial." *Id*. (citing TEX. R. APP. P. 26.2(a)(1)). Here, appellant did not timely file a notice of appeal. Nor did he timely file a motion for extension of time to file his notice of appeal. Because it appeared that we lacked jurisdiction over this appeal, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

In response, appellant complains that his sentence was orally pronounced on April 8, 2020, and that he did not learn of the signed judgments until June 9, 2020. "A trial court's pronouncement of sentence is oral, while the judgment, including the sentence assessed, is merely the written declaration and embodiment of that oral pronouncement." *Ex parte Madding*, 70 S.W.3d 131, 135 (Tex. Crim. App. 2002). "[T]he imposition of sentence is the crucial moment when all of the parties are physically present at the sentencing hearing and able to hear and respond to the imposition of sentence." *Id*. "Once he leaves the courtroom, the defendant begins serving the sentence imposed." *Id*. "Thus, it is the pronouncement of sentence that is the appealable event, and the written sentence or order simply memorializes it and should comport therewith." *Id*. (citation omitted). Accordingly, a defendant's notice of appeal must be filed within thirty days after the day sentence is imposed or suspended in open court. *See* TEX. R. APP. P. 26.2(a); *Rodarte v. State*, 860 S.W.2d 108, 109-10 (Tex. Crim. App. 1993) (interpreting appellate rule); *Smith v. State*, 559 S.W.3d 527, 535 (Tex. Crim. App. 2018) (discussing *Rodarte*). Thus, to invoke our jurisdiction, appellant was required to file a notice of appeal within thirty days after his sentence was orally pronounced, that is by May 8, 2020. He failed to do so.

Arriola also points to various emergency orders that were in place during the COVID-19 pandemic. However, none of these orders would have extended the deadline in which appellant had to file his notice of appeal.

Because the notice of appeal in this case was not timely filed, we lack jurisdiction to entertain the appeal. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (holding that if appeal is not timely perfected, court of appeals does not obtain jurisdiction to address merits of appeal, and court may take no action other than to dismiss appeal; court may not suspend rules to alter time for perfecting appeal); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996); *see also Ater v. Eighth Court of Appeals*, 802 S.W.2d 241 (Tex. Crim. App. 1991) (explaining that writ of habeas corpus pursuant to article 11.07 of the Texas Code of Criminal Procedure governs out-of-time appeals from felony convictions). Accordingly, we dismiss this appeal for want of jurisdiction.

PER CURIAM

Do not publish