



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00192-CR

Kendell Marzell **JOHNSON**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 399th Judicial District Court, Bexar County, Texas
Trial Court No. 2019CR4119
Honorable Frank J. Castro, Judge Presiding

PER CURIAM

Sitting: Luz Elena D. Chapa, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: June 16, 2021

DISMISSED FOR LACK OF JURISDICTION

Kendell Markell Johnson seeks to appeal the trial court's judgment convicting him of burglary of a habitation. The trial court imposed sentence on December 11, 2020. Johnson did not file a motion for new trial and his deadline for filing a notice of appeal was therefore January 11, 2021. *See* TEX. R. APP. P. 26.2(a)(1). The clerk's record contains a notice of appeal file-stamped May 13, 2021. The envelope in which the notice of appeal was mailed bears a postmark of April 29, 2021. Johnson's motion for appointment of appellate counsel, received by the trial court clerk

the same day, contains a certificate of service dated April 27, 2021. Johnson did not file a timely motion for extension of time to file the notice of appeal. *See* TEX. R. APP. P. 26.3.

On May 21, 2021, we notified Johnson that the record raised an issue regarding our jurisdiction over the appeal and ordered him to file a response showing the appeal was timely filed. Johnson filed a response acknowledging the notice of appeal was not timely filed.

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 lack of jurisdiction.

PER CURIAM

DO NOT PUBLISH