

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-14-00247-CR

EBONY LIVING, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 2
Jefferson County, Texas
Trial Cause No. 293812

MEMORANDUM OPINION

A jury convicted appellant Ebony Living of terroristic threat, and on April 3, 2014, the trial court sentenced her to one hundred eighty days of confinement, but suspended imposition of sentence and placed her on community supervision for two years. Because Living did not file a motion for new trial, her notice of appeal was due on May 5, 2014. *See* Tex. R. App. P. 26.2(a)(1) (Notice of appeal must be filed within thirty days of sentencing in the absence of a timely-filed motion for new trial.). Living's notice of appeal was not filed until May 23, 2014, and Living

did not file a motion to extend the time for filing the notice of appeal with this Court. *See* Tex. R. App. P. 26.3.

Accordingly, on May 29, 2014, we informed Living by letter that we would dismiss the appeal on or after June 13, 2014, unless any party filed a response showing grounds for continuing the appeal. Living filed a response, in which she contends the trial court granted her motion for leave to file an out-of-time appeal. On May 29, 2014, the trial court signed an order purporting to grant Living's motion to file her appellate brief outside the time limitation.¹

The Court finds that the notice of appeal was not timely filed. *See* Tex. R. App. P. 26.2. A notice of appeal that complies with Rule 26 of the Texas Rules of Appellate Procedure is required to vest this Court with jurisdiction. *See* Tex. R. App. P. 25.2(b), 26.2(a); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Only the Court of Criminal Appeals may grant an out-of-time appeal. *See* Tex. Code Crim. Proc. Ann. art. 11.07 (West Supp. 2013); *Olivo*, 918 S.W.2d at 525 n.8. Because Living's notice of appeal was not timely filed, we dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 26.2(a)(1).

APPEAL DISMISSED.

¹In her motion filed with the trial court, Living states that counsel hand-delivered her Notice of Appeal on or about April 8, 2014, "but for some unknown reason, it was not processed."

LEANNE JOHNSON
Justice

Submitted on July 8, 2014
Opinion Delivered July 9, 2014
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.