

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00535-CV

REGINALD DREARY, Appellant

V.

COIII SALTER AND GANG INTELLIGENT OFFICIAL SHEFFIELD,
Appellees

On Appeal from the 258th District Court
Polk County, Texas
Trial Cause No. CIV19,027

MEMORANDUM OPINION

On December 28, 2015, Reginald Dreary filed a notice of appeal of the trial court's Order of October 26, 2015, dismissing his lawsuit for want of prosecution. We notified the parties that the appeal would be dismissed because the notice of appeal was filed too late to perfect an appeal. *See* Tex. R. App. P. 26.1. The appellant filed a response in which he states that the notice of appeal was filed late because he initially mailed his notice of appeal to the United States District Court

for the Eastern District of Texas and the notice was not returned to him for filing in the proper court until the time for perfecting an appeal had expired.

“[A] pro se inmate’s petition that is placed in a properly addressed and stamped envelope or wrapper is deemed filed at the moment prison authorities receive the document for mailing.” *Warner v. Glass*, 135 S.W.3d 681, 682 (Tex. 2004). In this case, Dreary concedes he did not properly address the first envelope in which he mailed his notice of appeal.¹ “Tex. R. App. P. 26.1(a). He further admits that when he resubmitted his notice of appeal to the prison authorities for mailing with a properly addressed envelope, it was after the time for requesting an extension of time had expired. The appellant failed to file a notice of appeal within the time for which we may grant an extension of time to perfect an appeal. See Tex. R. App. P. 26.3. We dismiss the appeal for lack of jurisdiction. See Tex. R. App. P. 42.3(a).

APPEAL DISMISSED.

LEANNE JOHNSON
Justice

¹ Because he did not file his notice of appeal with the appellate court, Texas Rule of Appellate Procedure 26.1(a) does not apply. *See* Tex. R. App. P. 26.1(a) (“If a notice of appeal is mistakenly filed with the appellate court, the notice is deemed to have been filed the same day with the trial court clerk, and the appellate clerk must immediately send the trial court clerk a copy of the notice.”).

Submitted on February 10, 2016
Opinion Delivered February 11, 2016

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