

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-23-00033-CR
NO. 09-23-00034-CR

RUSSELL THOMAS BEAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 21-37100 and 21-37101

MEMORANDUM OPINION

On December 12, 2022, the trial court sentenced Russell Thomas Bean on separate indictments for abandoning a child, but suspended imposition of the sentences and placed Bean on community supervision. *See* Tex. Penal Code Ann. § 22.041; *see also* Tex. Code Crim. Proc. Ann. art. 42A.053(a)(1). On January 26, 2023, Bean filed notices of appeal. We questioned whether we had jurisdiction over the appeals. In response, on February 8, 2023, a newly appointed counsel for Bean

filed a motion through which Bean requests that the appeals be allowed to proceed. Bean does not claim that he has obtained habeas relief granting him the right to file out-of-time appeals. *See generally* Tex. Code Crim. Proc. Ann. art. 11.072; *see also Ex parte Hiracheta*, 307 S.W.3d 323, 325 (Tex. Crim. App. 2010) (“An applicant must file an application for writ of habeas corpus under Texas Code of Criminal Procedure 11.072 in the trial court in which community supervision was imposed in order to attack a judgment of conviction ordering community supervision.”).

In a criminal case, a timely notice of appeal is necessary to invoke this court’s jurisdiction. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Here, the notice of appeal was due on January 11, 2023. *See* Tex. R. App. P. 26.2(a)(1). A late notice of appeal may be considered timely so as to invoke the appellate court’s jurisdiction if it is filed within fifteen days of the last day allowed for filing, along with a motion for extension of time which is filed with the court of appeals within fifteen days of the last day allowed for filing the notice of appeal, and the court of appeals grants the motion for extension of time. *See* Tex. R. App. P. 26.3 Here, a motion for extension of time was due to be filed no later than January 26, 2023. “When a notice of appeal is filed within the fifteen-day period but no timely motion for extension of time is filed, the appellate court lacks jurisdiction.” *Olivo*, 918 S.W.2d at 522.

We dismiss the appeals for lack of jurisdiction. *See* Tex. R. App. P. 43.2(f).

APPEALS DISMISSED.

PER CURIAM

Submitted on March 7, 2023
Opinion Delivered March 8, 2023
Do Not Publish

Before Horton, Johnson and Wright, JJ.