



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-14-00489-CR**

DARRELL WAYNE PHILLIPS

APPELLANT

V.

THE STATE OF TEXAS

STATE

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FROM THE 213TH DISTRICT COURT OF TARRANT COUNTY  
TRIAL COURT NO. 0557784D

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**MEMORANDUM OPINION<sup>1</sup>**  
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On June 9, 2014, the trial court denied appellant's pro se motion requesting DNA testing, which he filed under chapter 64 of the code of criminal procedure.<sup>2</sup> After the due date for a notice of appeal but within the time period

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<sup>1</sup>See Tex. R. App. P. 47.4.

<sup>2</sup>See Tex. Code Crim. Proc. Ann. arts. 64.01–.05 (West 2006 & Supp. 2014).

for requesting an extension of time to file a notice of appeal, appellant filed a notice of appeal.<sup>3</sup> See Tex. R. App. P. 26.2(a)(1), 26.3; see also *Swearingen v. State*, 189 S.W.3d 779, 781 (Tex. Crim. App. 2006) (“[A] DNA movant must meet applicable filing and time requirements found in the Rules of Appellate Procedure.”). But he did not file a timely motion to extend the time to file his notice of appeal. See Tex. R. App. P. 26.3. Later, appellant filed a “subsequent” notice of appeal. The trial court appointed counsel to represent appellant on appeal.

On December 5, 2014, we sent a letter to appellant that expressed our concern that we lack jurisdiction because the notice of appeal was not timely. We informed appellant that unless he filed a response showing grounds for continuing the appeal, it could be dismissed. Appellant filed a response in which he agreed that we lack jurisdiction and conceded that dismissal is appropriate. Accordingly, we dismiss the appeal for want of jurisdiction. See Tex. R. App. P. 25.2(b), 26.2(a), 26.3(b), 43.2(f); see also *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996) (“When a notice of appeal is filed within the fifteen-day [extension] period but no timely motion for extension of time is filed, the appellate court lacks jurisdiction.”); *Brock v. State*, No. 02-14-00310-CR, 2014 WL

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<sup>3</sup>Appellant’s original notice of appeal bears a file-stamped date of July 22, 2014. His certificate of service on the notice of appeal states that he sent it to the district clerk on July 13, 2014.

5492730, at \*1 (Tex. App.—Fort Worth Oct. 30, 2014, no pet.) (mem. op., not designated for publication) (applying *Olivo*).

PER CURIAM

PANEL: LIVINGSTON, C.J.; DAUPHINOT and GARDNER, JJ.

DO NOT PUBLISH  
Tex. R. App. P. 47.2(b)

DELIVERED: January 22, 2015