



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

**NO. 02-16-00256-CR**

ANTHONY G. CURTALE

APPELLANT

V.

THE STATE OF TEXAS

STATE

-----  
FROM COUNTY CRIMINAL COURT NO. 1 OF DENTON COUNTY  
TRIAL COURT NO. CR-2015-06729-A

-----  
**MEMORANDUM OPINION<sup>1</sup>**  
-----

Appellant Anthony G. Curtale attempts to appeal from his conviction for assault.<sup>2</sup> On May 24, 2016, a jury convicted him of that offense, and the trial court assessed his punishment at 180 days' confinement but suspended imposition of the sentence. The court placed appellant on community

---

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

<sup>2</sup>See Tex. Penal Code Ann. § 22.01(a) (West Supp. 2016).

supervision for eighteen months and certified his right to appeal. Without filing a motion for new trial, appellant filed a notice of appeal on June 24, 2016.

On July 28, 2016, we sent appellant a letter (through his counsel) expressing our concern that we lack jurisdiction because his notice of appeal was not timely filed. We asked him to file a response and informed him that if we determined that the appeal was not timely perfected, it would be dismissed. He has not responded to our letter.

Because appellant did not file a motion for new trial following his May 24 conviction and suspension of his sentence, his notice of appeal was due on June 23, 2016. See Tex. R. App. P. 4.1(a), 26.2(a)(1); see also *Ervin v. State*, No. 02-14-00251-CR, 2015 WL 5093201, at \*3 (Tex. App.—Fort Worth Aug. 27, 2015, pet. ref'd) (mem. op., not designated for publication) (calculating the deadline to file a notice of appeal under rule 4.1(a)). He filed the notice of appeal one day late on June 24, 2016. See Tex. R. App. P. 26.2(a)(1). He did not file a motion for an extension of time to file the notice of appeal. See Tex. R. App. P. 26.3(b).

A timely notice of appeal is necessary to invoke our jurisdiction. Tex. R. App. P. 25.2(b); *Taylor v. State*, 424 S.W.3d 39, 43 (Tex. Crim. App. 2014). Because appellant's notice of appeal was one day late and because he did not file a motion to extend the time for filing the notice of appeal, we dismiss the appeal for want of jurisdiction. See Tex. R. App. P. 25.2(b), 26.2(a), 43.2(f); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996) ("When a notice of appeal is filed within the fifteen-day period [for filing a motion for extension of

time] 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 5492730, at \*1 (Tex. App.—Fort Worth Oct. 30, 2014, no pet.) (mem. op., not designated for publication) (applying *Olivo* and dismissing an appeal when the notice of appeal was one day late).

PER CURIAM

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

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

DELIVERED: October 6, 2016