



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

NO. 02-18-00083-CR

EX PARTE NICHOLAS J. EVANS

FROM CRIMINAL DISTRICT COURT NO. 3 OF TARRANT COUNTY
TRIAL COURT NO. C-3-010454-1325781-AP

MEMORANDUM OPINION¹

On January 2, 2018, the trial court denied relief on appellant Nicholas J. Evans's application for writ of habeas corpus, which he filed under article 11.072 of the code of criminal procedure.² On February 1, 2018, Evans filed a "Motion for New Trial" that contested the January 2 denial order. On February 5, 2018,

¹See Tex. R. App. P. 47.4.

²See Tex. Code Crim. Proc. Ann. art. 11.072 (West 2015).

Evans filed a notice of appeal; he did not file a motion to extend the time to file the notice of appeal. See Tex. R. App. P. 26.3.

On March 5, 2018, we sent Evans a letter in which we expressed our concern that we lack jurisdiction over the appeal because he did not timely file the notice of appeal. We informed him that unless he filed a response showing grounds for continuing the appeal, we would dismiss it. Evans's response does not show adequate grounds for continuing the appeal.

The deadline for Evans to file a notice of appeal from the trial court's January 2 order was February 1. See Tex. R. App. P. 4.1(a), 26.2(a)(1). Evans's motion for new trial, which he filed on the day of the deadline to file a notice of appeal, did not extend the deadline to file the notice of appeal from the trial court's habeas corpus order. See Tex. R. App. P. 26.2(a)(2) (stating that in a criminal appeal, a timely motion for new trial extends the deadline to file a notice of appeal when "sentence [was] imposed or suspended in open court"); *Ex parte Gutierrez*, No. 03-17-00644-CR, 2017 WL 5247516, at *2 (Tex. App.—Austin Nov. 7, 2017, no pet.) (mem. op., not designated for publication) (“[A] motion for new trial filed after the trial court enters an order denying habeas corpus relief is ineffective to extend the appellate timetable[,] . . . and an appellant's notice of appeal must be filed within . . . the 30-day time period specified in Rule 26.2(a)(1).”); *Ex Parte Chavez*, No. 13-16-00331-CR, 2016 WL 4040252, at *1 (Tex. App.—Corpus Christi July 28, 2016, no pet.) (mem. op., not designated for publication) (holding similarly).

Because Evans's notice of appeal was untimely, because he did not file a motion to extend the time to file the notice of appeal, and because a timely notice of appeal is essential to our jurisdiction, we dismiss the appeal. See Tex. R. App. P. 43.2(f); see also *Mireles v. State*, No. 02-14-00228-CR, 2014 WL 6601964, at *1–2 (Tex. App.—Fort Worth Nov. 20, 2014, no pet.) (mem. op., not designated for publication).

/s/ Wade Birdwell
WADE BIRDWELL
JUSTICE

PANEL: SUDDERTH, C.J.; WALKER and BIRDWELL, JJ.

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

DELIVERED: April 26, 2018