



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

NO. 02-18-00136-CR

MARC ALYM KENNEDY

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 213TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 0852149D

MEMORANDUM OPINION¹

Marc Alym Kennedy attempts to appeal from his conviction for attempted manufacture of more than four grams but less than 200 grams of methamphetamine. On January 22, 2003, Kennedy pleaded guilty to the offense pursuant to a plea bargain, and in accordance with the plea bargain, the trial court sentenced him to eight years' confinement in the Institutional Division of the

¹See Tex. R. App. P. 47.4.

Texas Department of Criminal Justice. Over 15 years later, on February 15, 2018, Kennedy filed a notice of appeal.

On April 11, 2018, we notified Kennedy of our concern that we lack jurisdiction over his appeal because his notice of appeal was not timely filed. See Tex. R. App. P. 26.2(a). We warned Kennedy that we would dismiss his appeal unless he or any party responded showing grounds for continuing the appeal. See Tex. R. App. P. 44.3. Kennedy filed a response, but it does not show grounds for continuing the appeal.

Kennedy's deadline for filing a notice of appeal from his January 22, 2003 conviction expired over 15 years ago. See Tex. R. App. P. 26.2(a), 26.3. Our appellate jurisdiction is triggered through a timely filed notice of appeal. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). If a notice of appeal is not timely filed under rule 26.2, we do not have jurisdiction to address the merits of the appeal and may take no action—including granting an out-of-time appeal—other than dismissal. See *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998). Accordingly, we dismiss Kennedy's appeal for want of jurisdiction.² See Tex. R. App. P. 26.2(a), 26.3, 43.2(f).

²In his response, Kennedy asks this court to grant him an out-of-time appeal. The proper procedure for him to seek an out-of-time appeal is through a writ of habeas corpus under article 11.07 of the Texas Code of Criminal Procedure. See Tex. Code Crim. Proc. Ann. art. 11.07 (West 2015); *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding). Kennedy also asks this court to appoint him counsel; we deny his request.

/s/ Elizabeth Kerr
ELIZABETH KERR
JUSTICE

PANEL: KERR, PITTMAN, and BIRDWELL, JJ.

DO NOT PUBLISH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

DELIVERED: May 17, 2018