



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-18-00381-CR

ANDREW COLBY LIVINGSTON, Appellant

v.

THE STATE OF TEXAS

On Appeal from the 235th District Court
Cooke County, Texas
Trial Court No. CR17-00284

Before Sudderth, C.J.; Walker and Meier, JJ.
Memorandum Opinion by Chief Justice
Sudderth

MEMORANDUM OPINION

Appellant Andrew Colby Livingston attempts to appeal his conviction for continuous sexual abuse of a child under the age of 14. *See* Tex. Penal Code Ann. § 21.02 (West Supp. 2018). Appellant was convicted on July 11, 2018, making his notice of appeal due August 10, 2018. *See* Tex. R. App. P. 26.2(a)(1). He did not file a notice of appeal until August 24, 2018.

By letter dated August 28, 2018, we notified Livingston of our concern that we may not have jurisdiction because the notice of appeal was not timely filed and requested a response showing grounds for continuing the appeal. We warned that a failure to do so could result in our dismissing the appeal for lack of jurisdiction. *See* Tex. R. App. P. 44.3. On September 5, 2018, Livingston's counsel filed a motion to extend time to file a late notice of appeal. *But see Olivo v. State*, 918 S.W.2d 519, 524 (Tex. Crim. App. 1996) (holding that the failure to file a motion for extension of time within the 15 days of the deadline for the notice of appeal deprives the reviewing court of jurisdiction). In it, she asserted that she was confident that a motion for new trial was e-filed on August 6, 2018, thereby extending the time for filing a notice of appeal, but that she later realized that the motion was not accepted or filed by the Cooke County District Clerk. *See* Tex. R. App. P. 26.2(a)(2), 26.3. By letter dated September 13, 2018, we requested that Livingston's counsel provide us with confirmation of service of the motion for new trial from the electronic filing manager or other confirmation that the motion for new trial was tendered to the electronic

filing manager. *See generally*, Tex. R. App. P. 9.2(c)(4), (6). Livingston's counsel filed a response but it did not include any such confirmation.

We therefore dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 43.2(f), 44.3.

/s/ Bonnie Sudderth

Bonnie Sudderth
Chief Justice

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Tex. R. App. P. 47.2(b)

Delivered: October 11, 2018