



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

No. 02-18-00481-CR

JOEL DAVID BRENNAN, Appellant

V.

THE STATE OF TEXAS

On Appeal from Criminal District Court No. 4
Tarrant County, Texas
Trial Court No. 1512999D

Before Kerr, Pittman, and Birdwell, JJ.
Memorandum Opinion by Justice Kerr

MEMORANDUM OPINION

Joel David Brennan attempts to appeal from his conviction for sexual assault of a child under age 17. *See* Tex. Penal Code Ann. § 22.011(a)(2), (c)(1).

The trial court sentenced Brennan on September 14, 2018, and he did not move for a new trial. Brennan's notice of appeal was therefore due by October 15, 2018, but he did not file his pro se notice of appeal until October 25, 2018. *See* Tex. R. App. P. 26.2(a)(1) (providing that a notice of appeal must be filed within 30 days of sentencing absent a timely filed new-trial motion); *see also* Tex. R. App. P. 4.1(a) (stating that if the last day of a period is a Saturday, Sunday, or legal holiday, the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday). Even though his notice of appeal was late, Brennan did not move to extend the deadline for filing his notice of appeal. *See* Tex. R. App. P. 26.3 (allowing this court to extend the time for filing a notice of appeal if, within 15 days after the deadline for filing the notice of appeal has passed, the appellant files a notice of appeal in the trial court and a motion for extension of time in this court).

On November 15, 2018, we informed Brennan and his court-appointed attorney¹ of our concern that we lack jurisdiction over this appeal because Brennan's notice of appeal was untimely filed. *See* Tex. R. App. P. 26.2(a)(1). We warned that this appeal was subject to dismissal unless Brennan or any other party filed a response

¹The trial court appointed Brennan's appellate attorney after Brennan filed his notice of appeal.

showing grounds for continuing the appeal. *See* Tex. R. App. P. 44.3. Brennan’s attorney filed a response, but it does not show grounds for continuing the appeal.

A timely filed notice of appeal is essential to vest this court with jurisdiction over the appeal. *See* Tex. R. App. P. 26.2; *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996) (“A timely notice of appeal is necessary to invoke a court of appeals’ jurisdiction.”). The Texas Court of Criminal Appeals has declined to adopt the “civil appellate approach” that would allow us to imply a timely filed motion for an extension of time to file a notice of appeal from a late notice of appeal filed within 15 days of its due date. *Olivo*, 918 S.W.2d at 522–25; *Kessinger v. State*, 26 S.W.3d 725, 726 (Tex. App.—Fort Worth 2000, pet. ref’d); *see Buckbee v. State*, Nos. 02-18-00052-CR, 02-18-00053-CR, 02-18-00054-CR, 2018 WL 2248490, at *1 (Tex. App.—Fort Worth May 17, 2018, no pet.) (mem. op., not designated for publication); *cf. Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997).

Because Brennan did not timely file his notice of appeal and did not move to extend the deadline for filing his notice of appeal, we dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 26.2(a)(1), 26.3(b), 43.2(f), 44.3.

/s/ Elizabeth Kerr
Elizabeth Kerr
Justice

Do Not Publish
Tex. R. App. P. 47.2(b)

Delivered: January 17, 2019