



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

No. 02-20-00148-CR

JENNIFER REBECCA CAMPBELL, Appellant

v.

THE STATE OF TEXAS

On Appeal from the 355th District Court
Hood County, Texas
Trial Court No. CR13845

Before Sudderth, C.J.; Gabriel and Wallach, JJ.
Memorandum Opinion by Justice Wallach

MEMORANDUM OPINION

Appellant Jennifer Rebecca Campbell attempts to appeal from the trial court's judgment convicting her of possessing one or more grams but less than four grams of methamphetamine and sentencing her to ten years' confinement. *See* Tex. Health & Safety Code Ann. §§ 481.102(6), 115(c); Tex. Penal Code Ann. § 12.34(a). Because (1) Campbell filed her motion for new trial and therefore her notice of appeal too late and (2) we can neither imply a timely motion for an extension of time to file her notice of appeal nor entertain her untimely filed motion for that extension, we dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 43.2(f).

The trial court convicted and sentenced Campbell on September 1, 2020. She filed both a motion for new trial and a notice of appeal on October 9, 2020. On October 15, 2020, we notified Campbell of our concern that we lacked jurisdiction over the appeal because the motion for new trial was due on October 1, 2020, making the notice of appeal filed along with the motion on October 9, 2020 untimely. *See* Tex. R. App. P. 25.2(b), 26.2(a). We informed Campbell that unless she or any party desiring to continue the appeal filed a response showing grounds for continuing the appeal, the appeal could be dismissed for want of jurisdiction. *See* Tex. R. App. P. 25.2, 44.3.

In Campbell's response to our jurisdictional inquiry, filed October 21, 2020, she argues that this court should imply a motion for extension of time under *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997), and treat her notice of appeal as timely

because it was filed within fifteen days of its due date. She also characterizes her untimely filed motion for new trial and untimely filed notice of appeal as “harmless procedural defects.” Along with her response, Campbell filed a motion for extension of time to file her notice of appeal.

A defendant perfects an appeal by filing with the trial court clerk, within thirty days after the date sentence was imposed, or within ninety days after sentencing if the defendant timely filed a motion for new trial, a written notice of appeal showing a desire to appeal. *See* Tex. R. App. P. 25.2(b), (c), 26.2(a). A motion for new trial is timely if it is filed “no later than 30 days after” the date the trial court imposes sentence in open court. *See* Tex. R. App. P. 21.4(a). An appellate court may extend the deadline for filing a notice of appeal if an appellant files both a notice of appeal and a motion for extension of time to file that notice of appeal within fifteen days after the deadline for filing a notice of appeal. Tex. R. App. P. 26.3.

A notice of appeal that complies with the requirements of Rule 26 is essential to vest this court with jurisdiction over an appeal. *See* Tex. R. App. P. 26.2. The Texas Court of Criminal Appeals has expressly held that without (1) a timely filed notice of appeal or (2) both a notice of appeal and a motion for extension of time to file that notice of appeal filed within fifteen days after the deadline for filing the notice of appeal, we cannot exercise jurisdiction over an appeal. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). The *Olivo* court 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 fifteen days of its due date. *Id.* at 522–25; *Kessinger v. State*, 26 S.W.3d 725, 726 (Tex. App.—Fort Worth 2000, pet. ref'd); *cf. Verburgt*, 959 S.W.2d at 615.

Campbell filed her motion for new trial too late to extend the deadline for her notice of appeal. Her sentence was imposed on September 1, 2020, making her motion for new trial due no later than October 1, 2020. *See* Tex. R. App. P. 4.1(a), 21.4(a). Campbell did not file her motion for new trial, however, until October 9, 2020, making it untimely. An untimely motion for new trial does not extend the time for filing a notice of appeal. *Taylor v. State*, No. 05-19-00951-CR, 2019 WL 3886647, at *1 (Tex. App.—Dallas Aug. 19, 2019, no pet.) (mem. op., not designated for publication); *Hernandez v. State*, No. 02-14-00207-CR, 2014 WL 3029175, at *1 (Tex. App.—Fort Worth July 3, 2014, no pet.) (per curiam) (mem. op., not designated for publication); *see* Tex. R. App. P. 26.2(a).

Because Campbell filed her motion for new trial too late, her notice of appeal's filing deadline remained October 1, 2020. *See* Tex. R. App. P. 26.2(a). However, Campbell did not file the notice of appeal until October 9, 2020, making it untimely.

Had Campbell also filed, by October 16, 2020, a motion for extension of time to file the notice of appeal in compliance with Rule 10.5(b)(2), this court could have granted the extension and accepted Campbell's notice of appeal as timely. *See* Tex. R. App. P. 10.5(b)(2), 26.3; *Olivo*, 918 S.W.2d at 522. However, this court is without jurisdiction either to entertain a late motion for extension or to imply a timely motion

for extension. *See* Tex. R. App. P. 26.3; *Olivo*, 918 S.W.2d at 523; *Aleman v. State*, 554 S.W.3d 794, 795 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (per curiam); *Lair v. State*, 321 S.W.3d 158, 159 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd); *cf.* *Castillo v. State*, 369 S.W.3d 196, 202 (Tex. Crim. App. 2012) (noting that filing the notice of appeal and the motion for extension one day late was “enough to deprive the appellate court of jurisdiction”). Accordingly, we dismiss this appeal for want of jurisdiction, and we dismiss all pending motions. *See Reynolds v. State*, No. 02-16-00055-CR, 2016 WL 1605135, at *1 & n.2 (Tex. App.—Fort Worth Apr. 21, 2016, no pet.) (mem. op., not designated for publication).

/s/ Mike Wallach
Mike Wallach
Justice

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

Delivered: November 12, 2020