

NO. 07-11-00210-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
JUNE 28, 2011

ANAIS ESPINOSA, APPELLANT

v.

THE STATE OF TEXAS, APPELLEE

FROM THE 64TH DISTRICT COURT OF HALE COUNTY;
NO. A14705-0211; HONORABLE ROBERT W. KINKAID JR., JUDGE

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

MEMORANDUM OPINION

Appellant Anais Espinosa attempts to appeal her conviction for “forgery financial instrument”¹ and sentence of eighteen months’ confinement in a state jail. On the State’s motion, the trial court revoked appellant’s deferred adjudication community supervision and adjudicated her guilty of the charged offense. Sentence was imposed on March 1, 2011. On May 16, 2011, appellant filed a *pro se* notice of appeal. We do not have a clerk’s record, but according to the information form filed in this court by the clerk of the trial court appellant did not file a motion for new trial.

¹ See Tex. Penal Code Ann. § 32.21(b) (West 2011).

By letter, we notified appellant her notice of appeal appeared untimely thus depriving us of appellate jurisdiction. We afforded her an opportunity to file documents or matters she considered necessary for determination of our jurisdiction. On June 6, we were notified by the clerk of the trial court that appellate counsel for appellant was appointed on June 2. We accordingly extended the deadline for appellant's response until June 23. Appellate counsel has filed a response, indicating his investigation has not located information that would show appellant filed a timely notice of appeal.

Our appellate jurisdiction is triggered through a timely notice of appeal. *Slaton v. State*, 981 S.W.2d 208, 210 (Tex.Crim.App. 1998); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex.Crim.App. 1996). Rule of Appellate Procedure 26.2(a) requires a notice of appeal be filed within 30 days after the day sentence is imposed in open court or within 90 days after imposition of the sentence if a timely motion for new trial is filed. Tex. R. App. P. 26.2(a)(1),(2). A motion for new trial is timely if filed "before, but no later than 30 days after, the date when the trial court imposes or suspends sentence in open court." Tex. R. App. P. 21.4(a).

Because appellant did not file a motion for new trial, her notice of appeal was due within thirty days after the date sentence was imposed in open court. However, appellant's notice of appeal was filed seventy-six days after imposition of sentence and was therefore untimely. Our appellate jurisdiction has not been invoked.

Consequently, we dismiss the appeal for want of jurisdiction.

James T. Campbell
Justice

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