



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-17-00067-CR

ROXANNA APRIL REYES, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 64th District Court
Hale County, Texas
Trial Court No. A18933-1109; Honorable Robert W. Kinkaid, Jr., Presiding

March 27, 2017

MEMORANDUM OPINION

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

In January 2012, Appellant, Roxanna April Reyes, was convicted of driving while intoxicated with a child passenger under the age of fifteen,¹ a state jail felony, and sentenced to eighteen months confinement. Her sentence was suspended in favor of community supervision for five years and a \$2,000 fine. The trial court later revoked

¹ TEX. PENAL CODE ANN. § 49.045 (West 2011).

Appellant's community supervision, upon a motion from the State and Appellant's plea of true to certain allegations in said motion, and imposed the original sentence of eighteen months confinement on January 20, 2017. No motion for new trial was filed. On February 23, 2017, Appellant filed an untimely notice of appeal without filing a motion for extension of time. We dismiss the purported appeal for want of jurisdiction.

The timely filing of a written notice of appeal is a jurisdictional prerequisite to hearing an appeal. *Castillo v. State*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2012). If a notice of appeal is not timely filed, a court of appeals has no option but to dismiss the appeal for want of jurisdiction. *Id.* When, as here, a motion for new trial is not filed, the notice of appeal must be filed within thirty days after the day the appellant's sentence is imposed. TEX. R. APP. P. 26.2(a)(1). This deadline can be extended if, within fifteen days of the deadline, appellant files the notice with the trial court clerk and also files a motion for extension of time in this court. See TEX. R. APP. P. 10.5(b), 26.3.

When a notice of appeal, but no motion for extension of time, is filed within the fifteen-day extension period, an appellate court lacks jurisdiction to dispose of the purported appeal in any manner other than by dismissing it for want of jurisdiction. *Olivo v. State*, 918 S.W.2d 519, 523 (Tex. Crim. App. 1996). This court has no authority to invoke Rule 2 of the Texas Rules of Appellate Procedure to enlarge the time in which to file a notice of appeal. TEX. R. APP. P. 2; *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998).

Appellant's sentence was imposed on January 20, 2017. Because she did not file a motion for new trial, her notice of appeal was due by February 21, 2017.² This deadline could have been extended by fifteen days to March 8, 2017, if Appellant had filed her notice of appeal and a motion for extension of time by that date. See TEX. R. APP. P. 26.3. Appellant filed her notice of appeal on February 23, 2017, within the fifteen-day extension period, but, despite a telephonic reminder from this court, did not file a motion for extension before the fifteen-day extension period ended. Unlike civil cases, we may not infer a motion to extend the time to file a notice of appeal in a criminal case. See *Olivo*, 918 S.W.2d at 523; *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997).

Appellant's untimely filed notice of appeal prevents this court from acquiring jurisdiction over her appeal.³ Consequently, the appeal is dismissed for want of jurisdiction.

Per Curiam

Do not publish.

² The thirtieth day after January 20, 2017, fell on Sunday, February 19th. Monday, February 20, 2017, was Presidents' Day, a legal holiday. Therefore, Appellant's notice of appeal was not due until Tuesday, February 21, 2017. See TEX. R. APP. P. 4.1(a).

³ Appellant may be entitled to relief by filing a post-conviction writ of habeas corpus returnable to the Texas Court of Criminal Appeals for consideration of an out-of-time appeal. See TEX. CODE CRIM. PROC. ANN. art. 11.07 (West 2015).