



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

No. 07-18-00123-CR
No. 07-18-00124-CR

VICTOR MORENO, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 242nd District Court
Swisher County, Texas
Trial Court Nos. A 4582-16-02, A 4583-16-02; Honorable Gregg Hukill, Presiding

April 25, 2018

MEMORANDUM OPINION

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

Appellant, Victor Moreno, was convicted of aggravated assault with a deadly weapon¹ and burglary of a building.² The trial court assessed punishment at thirty years

¹ TEX. PENAL CODE ANN. § 22.02(a)(2) (West 2011). The judgment reflects this offense to be a first degree felony.

² TEX. PENAL CODE ANN. § 30.02(c)(1) (West Supp. 2017). The judgment reflects this offense to be a state jail felony.

imprisonment for aggravated assault and two years imprisonment for burglary, with the sentences to run concurrently. At trial, Appellant waived his right to counsel and appeared *pro se*. Appellant has now filed a notice of appeal, again acting *pro se*, challenging his convictions.³ We dismiss the purported appeals for want of jurisdiction.

Appellant was sentenced on July 27, 2016. Because Appellant did not timely file a motion for new trial,⁴ his notice of appeal was due within thirty days after sentence was imposed, i.e., by August 26, 2016. See TEX. R. APP. P. 26.2(a) (a notice of appeal must be filed within thirty days after sentence is imposed or within ninety days after sentence is imposed if a motion for new trial is timely filed). Appellant filed his notice of appeal on April 10, 2018.⁵

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.* Further, this court has no authority to invoke appellate rule 2 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).

³ On December 26, 2017, Appellant filed a letter with the clerk of this court requesting that the clerk “forward” the letter so he could “apply for an out-of-time appeal.” The letter was forwarded to the Texas Court of Criminal Appeals. On April 10, 2018, Appellant filed a second letter with the clerk of this court which we have construed as a notice of appeal.

⁴ Pursuant to an inquiry, the district clerk informed the clerk of this court that Appellant filed a motion for new trial on March 5, 2018. As a motion for new trial must be filed within thirty days after sentence was imposed, the motion was untimely. See TEX. R. APP. P. 21.4(a).

⁵ See *Campbell v. State*, 320 S.W.3d 338, 342 (Tex. Crim. App. 2010) (prisoner mailbox rule).

Appellant's untimely filed notice of appeal prevents this court from acquiring jurisdiction over his appeals.⁶ Consequently, the appeals are dismissed for want of jurisdiction.

Per Curiam

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⁶ Appellant may be entitled to relief by filing an application for 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).