



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

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No. 07-21-00224-CR

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**ANTHONY DAVID LEE LEONING, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 251st District Court  
Randall County, Texas  
Trial Court No. 28,384-C-DNA, Honorable Ana Estevez, Presiding

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October 25, 2021

**MEMORANDUM OPINION**

Before QUINN, C.J., and PARKER and DOSS, JJ.

Appellant Anthony David Lee Leoning filed a notice of appeal, pro se, from the trial court's order denying his motion for post-conviction DNA testing. We dismiss the untimely appeal for want of jurisdiction.

The trial court signed the order denying Appellant's request for DNA testing on August 11, 2021. As no motion for new trial was filed, a notice of appeal was due within thirty days after the order was signed, i.e., by September 10, 2021. See TEX. R. APP. P.

26.2(a). Appellant mailed his notice of appeal to this court for filing.<sup>1</sup> It was received on September 27, 2021. Although the mailing envelope did not bear a postmarked date, appellant's notice of appeal stated the following: "I hereby certify that this appeal was put in the unit mailbox on September 21, 2021." No motion for extension accompanied the notice of appeal.

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, an appellate court has no option but to dismiss the appeal for want of jurisdiction. *Id.*

Accepting appellant's certification that he mailed his notice of appeal on September 21, 2021, the notice was deemed filed eleven days after the deadline. See *Campbell v. State*, 320 S.W.3d 338, 344 (Tex. Crim. App. 2010) ("[P]leadings of pro se inmates shall be deemed filed at the time they are delivered to prison authorities for forwarding to the court clerk."). Because no motion for extension was filed within the fifteen-day extension period provide by appellate rule 26.3, we lack jurisdiction to dispose of the purported appeal in any manner other than by dismissing it for want of jurisdiction. See TEX. R. APP. P. 26.3; *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996) (en banc) (holding that a notice of appeal and a motion for extension of time must be filed within the fifteen-day period to invoke a court of appeals' jurisdiction).

By letter of September 29, 2021, we notified appellant of the consequences of his late notice of appeal and directed him to show how we have jurisdiction. In response,

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<sup>1</sup> Appellant filed a document entitled "Brief of Appellant Anthony David Lee Leoning" which we have construed as a notice of appeal.

appellant filed a “Motion to Toll Time,” explaining that the delay in filing his notice of appeal was caused by a COVID-19 quarantine in his prison unit. Because the Texas Supreme Court has not granted appellate courts the authority to toll appellate deadlines due to COVID-19 complications, we deny the motion. See *Cantu v. Trevino*, No. 13-20-00299-CV, 2020 Tex. App. LEXIS 7767, at \*14 (Tex. App.—Corpus Christi Sept. 24, 2020, no pet.) (mem. op.) (“[T]he emergency orders do not allow us to ‘alter the time for perfecting an appeal beyond the period’ authorized by Rule 26.3.”).

Accordingly, we dismiss this appeal for want of jurisdiction.<sup>2</sup>

Per Curiam

Do not publish.

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<sup>2</sup> Appellant may be entitled to relief by filing an application for writ of habeas corpus returnable to the Court of Criminal Appeals for consideration of an out-of-time appeal. See TEX. CODE CRIM. PROC. ANN. art. 11.07.