



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-10-00007-CR

MICHAEL DEWAYNE DEAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 115th Judicial District Court
Upshur County, Texas
Trial Court No. 15,390

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Carter

MEMORANDUM OPINION

Michael DeWayne Dean appeals from his conviction for the offense of failure to register as a sex offender. His sentence was imposed December 10, 2009, and Dean filed no motion for new trial. Dean filed a notice of appeal by mailing it to the District Clerk of Upshur County. The post-mark on the envelope shows that the notice of appeal was placed in the United States mail January 12, 2010.

A late notice of appeal is considered timely and thus invokes the appellate court's jurisdiction if (1) it is filed within fifteen days of the last day allowed for filing, (2) a motion for extension of time is filed in the court of appeals within fifteen days of the last day allowed for filing the notice of appeal, and (3) the court of appeals grants the motion for extension of time. *Olivo v. State*, 918 S.W.2d 519 (Tex. Crim. App. 1996). Further, when a notice of appeal is filed within the fifteen-day period but no timely motion for extension of time is filed, the appellate court lacks jurisdiction. *Id.* (citing *Rodarte v. State*, 860 S.W.2d 108 (Tex. Crim. App. 1993)).

The Texas Court of Criminal Appeals interprets Rule 26.3 of the Texas Rules of Appellate Procedure to strictly require an appellant in a criminal case to file his or her notice of appeal and a motion for extension within the fifteen-day period for filing a late notice of appeal. *Id.* at 522–26; *see* TEX. R. APP. P. 26.3. The Texas Court of Criminal Appeals has expressly held that without a timely-filed notice of appeal or motion for extension of time, we cannot exercise jurisdiction over an appeal. *See Olivo*, 918 S.W.2d at 522; *see also Slaton v. State*, 981 S.W.2d 208, 209 n.3 (Tex.

Crim. App. 1998).

According to Rule 26.2 of the Texas Rules of Appellate Procedure and the above caselaw, Dean had thirty days after the day sentence was imposed to file a notice of appeal, or timely file a motion for new trial and thereby extend his time to file a notice of appeal. *See* TEX. R. APP. P. 21.4, 26.2(a)(1). No motion for new trial was filed. Dean, therefore, had until January 11, 2010,¹ to file a notice of appeal. Dean's notice of appeal was placed in the mail one day late, on January 12, 2010.² Further, no motion for extension of time to file the notice of appeal was filed. Hence, this appeal is untimely, and we are without jurisdiction to hear this case.

We dismiss this appeal for want of jurisdiction.

Jack Carter
Justice

Date Submitted: February 11, 2010
Date Decided: February 12, 2010

Do Not Publish

¹The thirtieth day, January 9, fell on a Saturday, thus extending Dean's time until the following Monday, January 11, 2010. TEX. R. APP. P. 4.1.

²We do note that Dean's certificate of service notes that a copy of the notice of appeal was hand delivered to the district attorney's office January 11, 2010. Delivery of the notice of appeal to the district attorney does not constitute filing with the proper authority. TEX. R. APP. P. 9.2.