



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

No. 06-11-00032-CR

MITCHELL KEITH GOLDEN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court
Franklin County, Texas
Trial Court No. 11792

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

MEMORANDUM OPINION

Mitchell Keith Golden appeals from his conviction by a jury of the offense of terroristic threat. His sentence was imposed on December 14, 2010. Golden filed a motion for new trial on January 14, 2011, by hand delivering it to the County Court of Franklin County thirty-one days later, on January 14, 2011. He filed his notice of appeal the same day. Both the motion for new trial and the notice of appeal were untimely.

A late notice of appeal invokes the appellate court's jurisdiction only 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.* at 522 (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 strictly to require an appellant in a criminal case to file his 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) (per curiam).

Golden has now filed a motion to extend time with this Court to file his notice of appeal and motion for new trial. That motion was placed in the mail on January 31, 2011, past the fifteen-day extension window allowed for motions to extend time to file notices of appeal. TEX. R. APP. P. 26.2(1). We overrule the motion as untimely filed.

This appeal is untimely brought, and we are without jurisdiction to hear this case.

We dismiss this appeal for want of jurisdiction.

Jack Carter
Justice

Date Submitted: February 7, 2011
Date Decided: February 8, 2011

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