



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

No. 06-11-00151-CR

BENJAMIN CHASE CAPPS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 188th Judicial District Court
Gregg County, Texas
Trial Court No. 39,504-A

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

MEMORANDUM OPINION

Benjamin Chase Capps attempts to appeal his conviction of felony driving while intoxicated. Capps' sentence was imposed April 28, 2011. His notice of appeal was filed August 10, 2011. We received the clerk's record August 15, 2011. The issue before us is whether Capps timely filed his notice of appeal. We conclude that he did not and dismiss the attempted appeal for want of jurisdiction.

A timely notice of appeal is necessary to invoke this Court's jurisdiction. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Rule 26.2(a) prescribes the time period in which a notice of appeal must be filed by a defendant in order to perfect appeal in a criminal case. A defendant's notice of appeal is timely if filed within thirty days after the day sentence is imposed or suspended in open court, or within ninety days after sentencing if the defendant timely files a motion for new trial. TEX. R. APP. P. 26.2(a); *Olivo*, 918 S.W.2d at 522. The record does not contain a motion for new trial. The last date Capps could timely file his notice of appeal was May 31, 2011, thirty days after the day the sentence was imposed in open court. *See* TEX. R. APP. P. 26.2(a)(1). Further, no motion for extension of time was filed in this Court within fifteen days of the last day allowed for filing the notice of appeal.

Capps has failed to perfect his appeal. Accordingly, we dismiss the appeal for want of jurisdiction.

Josh R. Morriss, III
Chief Justice

Date Submitted: August 17, 2011
Date Decided: August 18, 2011

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