

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-01-00709-CV

Bill Rutherford, Appellant

v.

Texas Department of Public Safety, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 331ST JUDICIAL DISTRICT
NO. 1011387, HONORABLE DON B. MORGAN, JUDGE PRESIDING**

On December 12, 2001, the clerk's record in this cause was received. The record contained appellant's "Notice of Appeal with Appeal Brief." That document was received in the district clerk's office on November 20, 2001. The cover letter for the document was dated November 12, 2001 and postmarked November 16, 2001. The record shows that the final judgment was signed on August 29, 2001. There were no post-judgment motions that would have extended the timetable for filing the notice of appeal; therefore, the notice of appeal was due September 28, 2001, thirty days after the judgment was signed. Tex. R. App. P. 26.1. By letter of December 20, 2001, this Court instructed appellant to provide either (1) proof of timely mailing of a notice of appeal or (2) an affidavit swearing that a notice of appeal was mailed to the district clerk's office on or before

September 28, 2001.¹ Appellant has supplied no proof that a notice of appeal was timely mailed.²
See Tex. R. App. P. 9.2. Accordingly, we dismiss the appeal for want of jurisdiction. Tex. R. App.
P. 42.3(a).

Marilyn Aboussie, Chief Justice

Before Chief Justice Aboussie, Justices B. A. Smith and Puryear

Dismissed for Want of Jurisdiction

Filed: January 31, 2002

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¹ Appellant might have mailed a separate notice of appeal before filing the combined notice of appeal and brief.

² Appellant responded to the letter, but simply complained there had been a lockdown in September, which hampered his access to the law library. He did not assert, however, that he had attempted to mail a notice of appeal in September.