

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00804-CR

Robert Wayne Longoria, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF COMAL COUNTY, 207TH JUDICIAL DISTRICT
NO. CR2015-514, HONORABLE GARY L. STEEL, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Robert Wayne Longoria has filed a notice of appeal from a judgment of conviction for driving while intoxicated with two or more previous convictions for the same type of offense. The district court imposed sentence on October 19, 2016. Thus, the thirty-day deadline for either filing a motion for new trial or perfecting the appeal was November 18, 2016. *See* Tex. R. App. P. 21.4(a) (time to file motion for new trial), R. 26.2(a) (time to file notice of appeal). Longoria filed a motion for new trial on November 22, 2016; therefore, the motion for new trial is untimely and did not extend Longoria's deadline for filing his notice of appeal. *See id.* R. 21.4(a), R. 26.2(a)(2). Also on November 22, 2016, Longoria filed his notice of appeal; it is likewise untimely. Although appellate courts may extend the time to file a notice of appeal, they may do so only if the party files a notice of appeal along with a motion for extension of time to file a notice of

appeal “within 15 days after the deadline for filing the notice of appeal.”¹ *See id.* R. 26.3; *Olivo v. State*, 918 S.W.2d 519, 523 (Tex. Crim. App. 1996) (holding that appellate court may only dismiss purported appeal for lack of jurisdiction when notice of appeal is filed within the fifteen-day period, but no motion for extension of time is filed within that period). Longoria did not file a motion for extension of time. Absent a timely filed motion for extension of time or notice of appeal, we lack jurisdiction to dispose of this appeal in any manner other than by dismissing it for want of jurisdiction. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (per curiam) (reaffirming *Olivo* after 1997 amendment of procedural rules in case in which notice of appeal was filed one day late); *Olivo*, 918 S.W.2d at 522. Accordingly, we dismiss the appeal for want of jurisdiction.²

¹ The Court of Criminal Appeals has not followed *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997), which holds that a motion for extension of time is necessarily implied if appellant, acting in good faith, files a notice of appeal within fifteen days after the thirty-day deadline. *See Lair v. State*, 321 S.W.3d 158, 159 (Tex. App.—Houston [1st Dist.] 2010, pet ref’d) (noting that *Olivo v. State*, 918 S.W.2d 519, 523 (Tex. Crim. App. 1996) deprives appellate courts of authority in criminal cases to imply request for extension and allow late notice of appeal).

² The remedy for a late-filed notice of appeal is to file a post-conviction writ of habeas corpus returnable to the Texas Court of Criminal Appeals for consideration of an out-of-time appeal. *See Tex. Code Crim. Proc. art. 11.07.*

Cindy Olson Bourland, Justice

Before Chief Justice Rose, Justices Field and Bourland

Dismissed for Want of Jurisdiction

Filed: March 8, 2017