

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

---

---

**NO. 03-17-00263-CR**

---

---

**The State of Texas, Appellant**

**v.**

**Marianne Geraci, Appellee**

---

---

**FROM THE COUNTY COURT AT LAW NO. 4 OF TRAVIS COUNTY  
NO. C-1-CR-16-100023, THE HONORABLE MIKE DENTON, JUDGE PRESIDING**

---

---

**MEMORANDUM OPINION**

Marianne Geraci was charged by complaint with the traffic offense of speeding. *See* Tex. Transp. Code § 545.351. After a jury trial in the municipal court of record, the jury found Geraci guilty and assessed her punishment at a \$200 fine. Geraci filed a motion for new trial, which was denied by the municipal court. *See* Tex. Gov't Code § 30.00014(c). Geraci then appealed the municipal court's judgment to the county court at law. *See id.* §§ 30.00014(a), 30.00731; *see also* Tex. Code Crim. Proc. arts. 4.08, 45.042(a). The county court at law issued a written opinion and judgment affirming the judgment of the municipal court. *See* Tex. Gov't Code § 30.00024(a), (c); *see also id.* § 30.00014(b); Tex. Crim. Proc. Code art. 45.042(b). However, upon rehearing, *see* Tex. R. App. P. 49.01, the county court at law reversed the judgment of the municipal court and remanded the case to the municipal court for further proceedings consistent with its opinion, *see* Tex. R. App.

P. 43.2(d). The State attempts to appeal the county court at law's decision. *See* Tex. Code Crim. Proc. art 44.01.

On behalf of the State, the City of Austin filed a notice of appeal. Attached to the notice of appeal was an affidavit of the County Attorney stating that he has authorized the Austin City Attorney's Office to represent the State and appeal the county court at law's decision reversing the municipal court judgment. *See* Tex. Code Crim. Proc. art. 45.201. Geraci filed a motion to dismiss in this Court, asserting that the State's notice of appeal was untimely. In response, the State filed a motion for an extension of time to perfect appeal pursuant to Texas Rules of Appellate Procedure 10.5(b) and 26.3. For the reasons that follow, we conclude that we lack jurisdiction over this appeal and grant Geraci's motion to dismiss.

Article 44.01 of the Code of Criminal Procedure, which governs the State's right to appeal, provides that "[t]he prosecuting attorney may not make an appeal . . . later than the 20th day after the date on which the order, ruling, or sentence to be appealed is entered by the court."<sup>1</sup> Tex. Crim. Proc. Code art. 44.01(d). Here, the judgment of the county court at law was entered on March 21, 2017, making the State's notice of appeal due April 10, 2017. The City filed its notice of appeal on April 14, 2017. Thus, the City's notice, filed four days late, is untimely. The City's reliance on a timely-filed motion for an extension of time to file the notice of appeal is misplaced. The Rules of Appellate Procedure provide the mechanism for invoking appellate jurisdiction, but do not create jurisdiction. *Keaton v. State*, 294 S.W.3d 870, 872 (Tex. App.—Beaumont 2009, no

---

<sup>1</sup> The statute was amended in 2007 to extend the deadline from fifteen days to twenty days. *See* Act of May 28, 2007, 80th Leg., R.S., ch. 1038, § 2, 2007 Tex. Gen. Laws 3592 (amended 2007) (current version at Tex. Code Crim. Proc. Ann. art. 44.01(d)).

pet.); see *White v. State*, 61 S.W.3d 424, 427–28 (Tex. Crim. App. 2001) (“The Rules of Appellate Procedure do not establish jurisdiction of courts of appeals, but, rather, set out procedures which must be followed in order to invoke jurisdiction over a particular appeal.”). The appellate rules cannot create jurisdiction where none exists. *State v. Riewe*, 13 S.W.3d 408, 413 (Tex. Crim. App. 2000); *Keaton*, 294 S.W.3d at 872. The twenty-day time limit in article 44.01(d) is a substantive limitation on the State’s right of appeal; it cannot be extended by the appellate court pursuant to Rule 26.3, which grants appellate courts authority to extend the time for perfecting appeal upon a timely filed motion for an extension of time to the file notice of appeal. *State v. White*, 248 S.W.3d 310, 313 (Tex. App.—Austin 2007, no pet.); see *Muller v. State*, 829 S.W.2d 805, 812 (Tex. Crim. App. 1992) (citing *State v. Demaret*, 764 S.W.2d 857, 858 (Tex. App.—Austin 1989, no pet.)).

Moreover, article 44.01(d) “requires the elected prosecuting attorney to ‘make an appeal’ by personally authorizing—in some fashion—the specific notice of appeal in question.” *Muller*, 829 S.W.2d at 810. More specifically, to comply with the statute, the elected prosecuting attorney must “make” the State’s notice of appeal, within the prescribed time period, either through the physical act of signing the notice or by personally and expressly authorizing an assistant to file a specific notice of appeal on his behalf. *Id.* at 811–12. In the context of a municipal appeal, an assertion that the County Attorney has consented to the City Attorney prosecuting an appeal, pursuant to article 45.201 of the Code of Criminal Procedure, may satisfy the requisite of a written express personal authorization by the County Attorney of the specific notice of appeal in a particular case. See *State v. Blankenship*, 146 S.W.3d 218, 220 (Tex. Crim. App. 2004). However, the

jurisdictional limits of article 44.01 require such authorization or consent to occur *before* the expiration of the twenty-day window of appeal. *See Muller*, 829 S.W.2d at 810. The affidavit attached to the City’s untimely notice of appeal in this case reflects that the County Attorney granted authorization for the City to represent the State in this municipal appeal on April 13, 2017—three days after the twenty-day period for filing the State’s notice had expired.

In sum, noncompliance with article 44.01 is not susceptible to correction through application of the amendment-and-cure provisions of the Texas Rules of Appellate Procedure. *Muller*, 829 S.W.2d at 812; *State v. Palmer*, 469 S.W.3d 264, 266–67 (Tex. App.—Fort Worth 2015, pet. ref’d); *White*, 248 S.W.3d at 313. Ratification by the elected prosecuting attorney, here the County Attorney, after the expiration of the deadline is ineffective. *See State v. Boseman*, 830 S.W.2d 588, 589–90 (Tex. Crim. App. 1992); *Palmer*, 469 S.W.3d at 266. The State lost the opportunity to appeal when the twenty-day window closed without the County Attorney’s personal and express authorization of this specific notice of appeal. *See Boseman*, 830 S.W.2d at 590; *Palmer*, 469 S.W.3d at 266. Jurisdiction cannot be retroactively obtained; once lost, the courts of appeals lack the power to invoke any rule to thereafter obtain jurisdiction. *Riewe*, 13 S.W.3d at 412–13; *Palmer*, 469 S.W.3d at 266–67.

Because no specific notice of appeal, personally approved by the “prosecuting attorney,” was filed within the twenty-day period, this Court did not obtain jurisdiction over this case. *See Boseman*, 830 S.W.2d at 591; *see also Muller*, 829 S.W.2d at 813 (“Therefore, at the time the [twenty] day filing window had closed, the State had not yet complied with the express provisions of Article 44.01 and the court of appeals thus had no jurisdiction to hear the merits of the

State’s appeal.”); *White*, 248 S.W.3d at 313–14 ( noting that “strict requirement of article 44.01(d) that the elected [prosecuting] attorney “make” the State’s appeal—by signing or personally authorizing the notice of appeal—within [twenty] days of the trial court’s order” “controls our subject-matter jurisdiction over the State’s appeal”). Accordingly, we grant Geraci’s motion and dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 43.2(f).

---

Melissa Goodwin, Justice

Before Justices Puryear, Pemberton, and Goodwin

Dismissed for Want of Jurisdiction

Filed: May 11, 2017

Do Not Publish