



NUMBER 13-16-00331-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

EX PARTE GUADALUPE TOVAR CHAVEZ JR.

**On appeal from the 206th District Court
of Hidalgo County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Garza, and Longoria
Memorandum Opinion Per Curiam**

Appellant, Guadalupe Tovar Chavez Jr., attempted to perfect an appeal from a March 21, 2016 order denying his article 11.072 application for a writ of habeas corpus. See TEX. CODE CRIM. PROC. ANN. art. 11.072, § 8 (West, Westlaw through 2015 R.S.). Appellant alleges that his motion for new trial was denied on May 23, 2016, and appellant's notice of appeal was filed on June 22, 2016. We dismiss the appeal for want of jurisdiction.

On June 24, 2016, the Clerk of this Court notified appellant that it appeared that the appeal was not timely perfected. Appellant was advised that the appeal would be dismissed if the defect was not corrected within ten days from the date of receipt of the Court's directive. Appellant did not correct the defect or file a response to this Court's notice.

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). Texas Rule of Appellate Procedure 26.2 provides that an appeal is perfected when the notice of appeal is filed within thirty days after the day sentence is imposed or suspended in open court, or after the day the trial court enters an appealable order, unless a motion for new trial is timely filed. TEX. R. APP. P. 26.2(a)(1); see *Rodarte v. State*, 860 S.W.2d 108, 109 (Tex. Crim. App. 1993); *Lair v. State*, 321 S.W.3d 158, 159 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd). Where a timely motion for new trial has been filed, notice of appeal shall be filed within ninety days “after the day the sentence is imposed or suspended in open court.” TEX. R. APP. P. 26.2(a)(2). The time within which to file the notice may be enlarged if, within fifteen days after the deadline for filing the notice, the party files the notice of appeal and a motion complying with Rule 10.5(b) of the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 26.3.

Given the plain language of Rule 26.2, a motion for new trial will extend the time to file a notice of appeal for cases in which sentence is imposed or suspended in open court, but will not extend the time to file a notice of appeal in other cases involving appealable orders. When a defendant is appealing an order that does not involve the

imposition or suspension of a sentence, the notice of appeal must be filed within the thirty-day time period provided by Rule 26.2(a)(1). *Ex parte Delgado*, 214 S.W.3d 56, 57 (Tex. App.—El Paso 2006, pet. ref'd); *Welsh v. State*, 108 S.W.3d 921, 922 (Tex. App.—Dallas 2003, no pet.).

An order denying habeas corpus relief under article 11.072 is an appealable order that does not impose or suspend a sentence. TEX. CODE CRIM. PROC. ANN. art. 11.072, § 8. Therefore, a notice of appeal from such an order must be filed within the thirty-day time period specified in rule 26.2(a)(1). See TEX. R. APP. P. 26.2(a)(1); *Ex parte Delgado*, 214 S.W.3d at 58; see also *Mireles v. State*, No. 02-14-00228-CR, 2014 WL 6601964, at *1 (Tex. App.—Fort Worth Nov. 20, 2014, no pet.) (mem. op. not designated for publication); *Fowler v. State*, No. 01-12-00300-CR, 2013 WL 653276, at *1 (Tex. App.—Houston [1st Dist.] Feb. 21, 2013, no pet.) (mem. op. not designated for publication).

Because appellant did not file his notice of appeal until ninety-three days after the trial court signed the appealable order, his notice of appeal is untimely and we lack jurisdiction over this appeal. Absent a timely filed notice of appeal, a court of appeals does not obtain jurisdiction to address the merits of the appeal in a criminal case and can take no action other than to dismiss the appeal for want of jurisdiction. *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998). Appellant may be entitled to an out-of-time appeal by filing a post-conviction writ of habeas corpus returnable to the Texas Court of Criminal Appeals; however, the availability of that remedy is beyond the jurisdiction of this Court. See TEX. CODE CRIM. PROC. ANN. art. 11.07, § 3(a) (West, Westlaw through 2015 R.S.); see also *Ex parte Garcia*, 988 S.W.2d 240 (Tex. Crim. App. 1999). The appeal is

DISMISSED FOR WANT OF JURISDICTION.

PER CURIAM

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
28th day of July, 2016.