



NUMBER 13-16-00541-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ARTHUR BRONCHAE KIRVEN,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

On appeal from the 19th District Court
of McLennan County, Texas.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Benavides
Memorandum Opinion Per Curiam**

Appellant, Arthur Bronchae Kirven, attempted to perfect an appeal from a conviction for injury to a child.¹ We dismiss the appeal for want of jurisdiction.

¹ This case is before the Court on transfer from the Tenth Court of Appeals in Waco pursuant to a docket equalization order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2015 R.S.).

Sentence in this matter was imposed on August 19, 2016 and a motion for new trial and notice of appeal were filed on September 21, 2016. On October 11, 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 responded by filing a motion for extension of time to file notice of appeal on October 28, 2016.

Texas Rule of Appellate Procedure 26.2 provides that an appeal is perfected when notice of appeal is filed within thirty days after the day sentence is imposed or suspended in open court unless a motion for new trial is timely filed. TEX. R. APP. P. 26.2(a)(1). Where a timely motion for new trial has been filed, notice of appeal shall be filed within ninety days after 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.

According to Texas Rule of Appellate Procedure 21.4, appellant had thirty days after the day sentence was imposed to file his motion for new trial. TEX. R. APP. P. 21.4. Because the thirtieth day fell on a Sunday, appellant had until the following Monday, September 19, 2016 to file a motion for new trial. See TEX. R. APP. P. 4.1. The motion for new trial was untimely because it was filed on September 21, 2016. Therefore, his notice of appeal was due to have been filed within thirty days after the day sentence was imposed or suspended in open court. See TEX. R. APP. P. 26.2(a)(2). Appellant filed

his notice of appeal on September 21, 2016. Although the notice of appeal was filed within the fifteen day time period, no such motion for extension of time was filed within the fifteen day time period. See *id.*

This Court's appellate jurisdiction in a criminal case is invoked by a timely filed notice of appeal. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). 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). Accordingly, appellant's motion to extend time to file notice of appeal is DENIED and the appeal is DISMISSED FOR WANT OF JURISDICTION.

PER CURIAM

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

Delivered and filed the
17th day of November, 2016.