



**NUMBER 13-17-00291-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**SPENCER CLAY BUTLER,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 24th District Court  
of Goliad County, Texas.**

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**MEMORANDUM OPINION**

**Before Chief Justice Valdez and Justices Longoria and Hinojosa  
Memorandum Opinion by Chief Justice Valdez**

Appellant Spencer Clay Butler, proceeding pro se, attempted to perfect an appeal from a conviction for murder. The judgment against appellant was entered on September 2, 2015. At that time, the trial court certified that it “is a plea-bargain case, and the defendant has NO right of appeal,” and “the defendant has waived the right of

appeal.” Appellant did not file his notice of appeal until June 2, 2017, twenty-one months after the rendition of judgment. We dismiss the appeal for want of jurisdiction.

On June 6, 2017, the Clerk of this Court notified appellant that it appeared that the appeal was not timely perfected and 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. In response, appellant filed a motion for extension of time to file his notice of appeal in which he argues that he has “been prevented, prolonged, hindered and delayed from being able to exhaust his post-conviction available remedies because his trial court had failed to finalize his conviction by issuing a mandate.” Appellant has also filed a motion requesting that we provide him with a copy of the appellate record.

“Timely filing of a written notice of appeal is a jurisdictional prerequisite to hearing an appeal.” *Castillo v. State*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2012); see *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996) (“A timely notice of appeal is necessary to invoke a court of appeals’ jurisdiction.”). In a criminal case, a defendant’s notice of appeal is due within thirty days after sentence is imposed in open court or the trial court enters an appealable order. See TEX. R. APP. P. 26.2(a)(1). The deadline to file a notice of appeal is extended to ninety days after the sentence is imposed if the defendant timely files a motion for new trial. See *id.* R. 26.2(a)(2). The time for filing a notice of appeal may be further extended if, within fifteen days of deadline for filing the notice of appeal, appellant files the notice of appeal and a motion complying with Rule 10.5(b). See *id.* R. 26.3.

Appellant’s notice of appeal, filed almost two years after the judgment was signed, was untimely. See Tex. R. App. P. 26.2. “If a notice of appeal is not timely filed, the

court of appeals has no option but to dismiss the appeal for lack of jurisdiction.” *Castillo*, 369 S.W.3d at 199; see *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 Ch. 49, 2017 R.S.); see also *Ex parte Garcia*, 988 S.W.2d 240 (Tex. Crim. App. 1999); *Ater v. Eighth Ct. of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991) (orig. proceeding).

Moreover, an appeal must be dismissed if a certification showing that the defendant has the right of appeal has not been made part of the record. TEX. R. APP. P. 25.2(d); see *Dears v. State*, 154 S.W.3d 610, 613 (Tex. Crim. App. 2005). Here, the clerk’s record supports the trial court’s certification that this is a plea-bargain case, the appellant waived the right to appeal, and appellant has no right of appeal. See TEX. R. APP. P. 25.2(a)(2),(d); *Dears*, 154 S.W.3d at 615. Because appellant has no right of appeal, we must dismiss this appeal without further action. See *Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006) (“A court of appeals, while having jurisdiction to ascertain whether an appellant who plea-bargained is permitted to appeal by Rule 25.2(a), must dismiss a prohibited appeal without further action, regardless of the basis for the appeal.”).

Accordingly, we dismiss the appeal for want of jurisdiction. See TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss all pending motions as moot. See *id.*

**/s/ Rogelio Valdez**  
ROGELIO VALDEZ  
Chief Justice

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

Delivered and filed the  
13th day of July, 2017.