



NUMBER 13-17-00308-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

AARON HERNANDEZ A/K/A ARRON HERNANDEZ,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 148th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Justices Rodriguez, Contreras, and Benavides
Memorandum Opinion by Justice Contreras**

Appellant Aaron Hernandez a/k/a Arron Hernandez, proceeding pro se, attempted to perfect an appeal from a conviction for driving while intoxicated, third offense, as a repeat felony offender from trial court cause number 16-CR-1447-E in the 148th District Court of Nueces County. See TEX. PEN. CODE ANN. § 49.04 (West, Westlaw through Ch. 49, 2017 R.S.). The judgment against appellant was entered on May 23, 2016. At that

time, the trial court certified that it “is a plea-bargain case, and the defendant has NO right of appeal.” Appellant filed a pro se motion for new trial approximately nine months later on February 16, 2017. Appellant did not file his notice of appeal until June 16, 2017, more than one year after the rendition of judgment. We dismiss the appeal for want of jurisdiction.

On June 16, 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 response to the defect notice. We granted appellant’s motion for extension of time. Appellant subsequently filed a motion to abate this cause on grounds he was “having a hard time getting the court to respond to my motions, i.e., one for a new trial, and the other for permission to file an appeal.” Appellant informed us that he was filing a petition for writ of mandamus asking us to compel the trial court to rule on his motion for a new trial and request for an appeal. Appellant has now filed that original proceeding with us, *In re Hernandez*, docketed in our cause number 13-17-00407CR. Appellant requests that we abate this appeal pending resolution of his petition for writ of mandamus.¹

“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

¹ By separate opinion issued this same date, we have denied appellant’s petition for writ of mandamus. See *In re Hernandez*, No. 13-17-0407-CR, 2017 WL ____, at *__ (Tex. App.—Corpus Christi July __, 2017, orig. proceeding) (mem. op., not designated for publication).

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 more than one year after the judgment was entered, was untimely. See *id.* R. 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, 240–41 (Tex. Crim. App. 1999) (per curiam); *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 record currently before the Court supports the trial court's certification that this is a plea-bargain case 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.”).

The Court, having examined and fully considered the appellant’s motion to abate this appeal and the record before the Court, is of the opinion that we lack jurisdiction over this appeal. Accordingly, we deny appellant’s request to abate this appeal. We dismiss the appeal for want of jurisdiction. See TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss any remaining motions as moot. See *id.*

DORI CONTRERAS
Justice

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

Delivered and filed the
20th day of July, 2017.