



NUMBER 13-17-00413-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

FLABIANO MAYORGA JR.,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 404th District Court
of Cameron County, Texas.**

MEMORANDUM OPINION

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

Appellant, Flabiano Mayorga Jr., attempted to perfect an appeal from a conviction for continuous sexual abuse of a child. We dismiss the appeal for want of jurisdiction.

Sentence in this matter was imposed on May 31, 2017. No motion for new trial was filed. Notice of appeal was filed on July 14, 2017. On July 25, 2017, 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. Counsel responded by filing an amended notice of appeal stating the judgment was filed on July 21, 2017, the notice of appeal was filed on July 14, 2017, and dates other documents were filed.

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.

Appellant is appealing an order that involves the imposition or suspension of a sentence, therefore, the notice of appeal was due to be filed within thirty days of the date the sentence was imposed. See *Rodarte*, 860 S.W.2d 108. Appellant's notice of appeal was not filed until forty-four days after his sentence was imposed and was, therefore, untimely. Appellant did not file a motion for extension of time as provided for in TEX. R.

APP. P. 26.3. 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) (Vernon 2005); see also *Ex parte Garcia*, 988 S.W.2d 240 (Tex. Crim. App. 1999).

The appeal is DISMISSED FOR WANT OF JURISDICTION.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Do not publish.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

Delivered and filed the
24th day of August, 2017.