



NUMBERS 13-17-00497-CR AND 13-17-00498-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

CANAAN ESTES,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 105th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

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

Appellant, Canaan Estes, proceeding pro se, attempted to perfect an appeal from a conviction for burglary of a habitation and a conviction of assault. The trial court imposed sentence in these matters on July 28, 2016. At that time, the trial court certified that it "is a plea-bargain case, and the defendant has NO right of appeal." On September

11, 2017 appellant filed a notice of appeal in both cause numbers. We dismiss the appeals for want of jurisdiction.

On September 15, 2017, the Clerk of this Court notified appellant that it appeared that the appeals were not timely perfected and that the appeals would be dismissed if the defect was not corrected within ten days from the date of receipt of the Court's directive. On September 20, 2017, appellant filed a motion for leave to file notice of appeal.

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.

Appellant's notice of appeal, filed more than one year 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 trial court has certified 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 these appeals 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, the appeals are DISMISSED FOR WANT OF JURISDICTION. See TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss all pending motions as moot. See *id.*

DORI CONTRERAS
Justice

Do not publish.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

Delivered and filed the
5th day of October, 2017.