



NUMBER 13-17-00507-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ROBERT TOVAR,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

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

MEMORANDUM OPINION

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

Appellant, Robert Tovar, attempted to perfect an appeal from a conviction for aggravated assault. The trial court imposed sentence in this matter on January 25, 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 15, 2017 appellant filed a pro se notice of appeal, a motion for appeal, and motion for mercy. We dismiss the appeal for want of jurisdiction.

On September 29, 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. Appellant's counsel has responded that appellant did not timely perfect his appeal and does not have the right to appeal.

"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 the 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 nineteen months 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 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.*

DORI CONTRERAS
Justice

Do not publish.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

Delivered and filed the
19th day of October, 2017.