

NO. 12-08-00198-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***CAVEN DEWAYNE MOORE,
APPELLANT***

§ *APPEAL FROM THE 2ND*

V.

§ *DISTRICT COURT OF*

***THE STATE OF TEXAS,
APPELLEE***

§ *CHEROKEE COUNTY, TEXAS*

***MEMORANDUM OPINION
PER CURIAM***

This appeal is being dismissed for want of jurisdiction. Appellant was convicted on two counts of aggravated sexual assault of a child. Sentence was imposed on January 16, 2008.

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). Appellant timely filed a motion for new trial on February 13, 2008. Therefore, his notice of appeal was due to have been filed on or before April 15, 2008. However, Appellant did not file his notice of appeal until April 30, 2008 and did not file a motion for extension of time to file his notice of appeal as permitted by Texas Rule of Appellate Procedure 26.3. *See* TEX. R. APP. P. 26.3 (appellate court may extend time for filing notice of appeal if, within fifteen days after deadline for filing notice of appeal, appellant files notice of appeal in trial court and motion complying with Texas Rule of Appellate Procedure 10.5(b) in appellate court).

On May 8, 2008, Appellant filed a motion requesting an extension of time for filing his Rule 26.3 motion along with a motion to extend the time for filing his notice of appeal. Texas Rule of Appellate Procedure 26.3 provides that a motion for extension of time to file a notice of appeal must be filed within fifteen days of the deadline for filing the notice of appeal. TEX. R. APP. P. 26.3. Accordingly, Appellant was required to file his motion on or before April 30, 2008. However, the motion was not filed until May 8, 2008, and therefore was untimely. *See id.*

Because this court has no authority to allow the late filing of a notice of appeal except as provided by Rule 26.3, the appeal must be dismissed. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Accordingly, Appellant's motions are overruled, and the appeal is *dismissed for want of jurisdiction*.

Opinion delivered May 14, 2008.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)