

**NO. 12-08-00495-CR
NO. 12-08-00496-CR**

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*GERALD JEROME RUSSELL,
APPELLANT*

§ *APPEALS FROM THE*

V.

§ *COUNTY COURT AT LAW NO. 2 OF*

*THE STATE OF TEXAS,
APPELLEE*

§ *SMITH COUNTY, TEXAS*

***MEMORANDUM OPINION
PER CURIAM***

These appeals are being dismissed for want of jurisdiction. After entering pleas of guilty, Appellant was convicted of resisting arrest or search and criminal trespass. Sentence was imposed in open court on December 5, 2007. Appellant did not file a motion for new trial in either case. Consequently, Appellant's notices of appeal were due on January 4, 2008. *See* TEX. R. APP. P. 26.2(a) (notice of appeal to be filed within thirty days after day sentence is imposed unless motion for new trial is timely filed). However, Appellant filed his notices of appeal on December 23, 2008.

Along with the notices of appeal, Appellant filed a motion in each case requesting an extension of time to file his notice of appeal. An appellate court may grant such a motion if, within fifteen days after the deadline for filing the notice of appeal, the party files the notice in the trial court and files a motion in the appellate court complying with Texas Rule of Appellate Procedure 10.5(b). TEX. R. APP. P. 26.3. To be timely under Rule 26.3, Appellant must have filed his motions for extension of time on or before January 21, 2008. Because his motions were filed on December 23, 2008, they are untimely and must be overruled.

Appellant's December 23, 2008 notices of appeal are untimely, which leaves us without

jurisdiction over the appeals. See *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998) (per curiam); *Olivo v. State*, 918 S.W.2d 519, 523 (Tex. Crim. App. 1996). Consequently, Appellant's motions for extension of time to file his notices of appeal are overruled, and these appeals are *dismissed for want of jurisdiction*.

Opinion delivered January 7, 2009.

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

(DO NOT PUBLISH)



COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

JANUARY 7, 2009

NO. 12-08-00495-CR

NO. 12-08-00496-CR

GERALD JEROME RUSSELL,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeals from the County Court at Law No. 2
of Smith County, Texas. (Tr.Ct.Nos. 002-84608-07 & 002-84686-07)

THESE CAUSES came on to be heard on the transcript of the record; and the same being inspected, it is the opinion of the Court that this Court is without jurisdiction of the appeals, and that these appeals should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by the Court that these appeal be, and the same are, hereby **DISMISSED FOR WANT OF JURISDICTION**, and that these decisions be certified to the court below for observance.

By *per curiam* opinion.

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

THE STATE OF TEXAS M A N D A T E

TO THE COUNTY COURT AT LAW NO. 2 OF SMITH COUNTY, GREETINGS:

Before our Court of Appeals for the 12th Court of Appeals District of Texas, on the 7th day of January, 2008, the cause upon appeal to revise or reverse your judgment between

GERALD JEROME RUSSELL, Appellant

NO. 12-08-00495-CR; Trial Court No. 002-84608-07

NO. 12-08-00496-CR; Trial Court No. 002-84686-07

By *per curiam* opinion.

THE STATE OF TEXAS, Appellee

was determined; and therein our said Court made its order in these words:

“THESE CAUSES came on to be heard on the transcript of the record; and the same being inspected, it is the opinion of the Court that this Court is without jurisdiction of the appeals, and that these appeals should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by the Court that these appeal be, and the same are, hereby **DISMISSED FOR WANT OF JURISDICTION**, and that these decisions be certified to the court below for observance.”

WHEREAS, WE COMMAND YOU to observe the order of our said Court of Appeals for the Twelfth Court of Appeals District of Texas in this behalf, and in all things have it duly recognized, obeyed, and executed.

WITNESS, THE HONORABLE JAMES T. WORTHEN, Chief Justice of our Court of Appeals for the Twelfth Court of Appeals District, with the Seal thereof affixed, at the City of Tyler, this the _____ day of _____, 200____.



CATHY S. LUSK, CLERK

By: _____
Deputy Clerk