

NO. 12-09-00184-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***KEVIN BENTI DAVIS, JR.,
APPELLANT***

§ *APPEAL FROM THE 217TH*

V.

§ *JUDICIAL DISTRICT COURT OF*

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

§ *ANGELINA COUNTY, TEXAS*

***MEMORANDUM OPINION
PER CURIAM***

This appeal is being dismissed for want of jurisdiction. Appellant was convicted of aggravated robbery. Sentence was imposed on May 11, 2009.

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 did not file a motion for new trial. Therefore, his notice of appeal was due to have been filed on or before June 10, 2009. However, Appellant did not file his notice of appeal until June 11, 2009, 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).

By letter dated June 17, 2009, this court notified Appellant that the information received in this appeal does not show the jurisdiction of the court because there was no notice of appeal filed within the time allowed by rule 26.2 and no timely motion for an extension of time to file the notice

of appeal as permitted by rule 26.3. Appellant was warned that the appeal would be dismissed unless the record was amended on or before June 29, 2009 to show the jurisdiction of this court. However, Appellant did not comply with or otherwise respond to this court's June 17, 2009 notice.

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, the appeal is *dismissed for want of jurisdiction*.

Opinion delivered July 8, 2009.

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

(DO NOT PUBLISH)