

**NO. 12-09-00307-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

***LARRY WAYNE CARPENTER,  
APPELLANT***

§

***APPEAL FROM THE 173RD***

***V.***

§

***JUDICIAL DISTRICT COURT OF***

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

§

***HENDERSON COUNTY, TEXAS***

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***MEMORANDUM OPINION***

***PER CURIAM***

This appeal is being dismissed for want of jurisdiction. Appellant was convicted of driving while intoxicated. Sentence was imposed on July 29, 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). To be timely, a motion for new trial in a criminal case must be filed not later than thirty days after the date sentence is imposed or suspended in open court. TEX. R. APP. P. 21.4(a). Appellant filed a motion for new trial on September 17, 2009. Because the motion for new trial was filed fifty days after the date sentence was imposed in open court, the motion was untimely and did not extend the time for filing Appellant's notice of appeal. *See id.* Therefore, Appellant's notice of appeal was due to have been filed on or before August 28, 2009. However, Appellant did not file his notice of appeal until September 21, 2009 and did not file a motion for extension of time to file his notice of appeal. *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 September 23, 2009, this court notified Appellant that his notice of appeal was untimely and that there was no timely motion for an extension of time to file the notice of appeal as permitted by rule 26.3. Appellant was further informed that the appeal would be dismissed unless, on or before October 5, 2009, the information filed in this appeal was amended to show the jurisdiction of this court. The October 5, 2009 deadline has passed, and Appellant has neither responded to this court's notice nor otherwise shown the jurisdiction of this court.

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 October 14, 2009.

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

(DO NOT PUBLISH)