

NO. 12-12-00068-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*MICHAEL BRADBERRY,
APPELLANT*

§

APPEAL FROM THE 2ND

V.

§

JUDICIAL DISTRICT COURT

*THE STATE OF TEXAS,
APPELLEE*

§

CHEROKEE COUNTY, TEXAS

***MEMORANDUM OPINION
PER CURIAM***

This appeal is being dismissed for want of jurisdiction. Appellant was convicted of felony theft and was sentenced to imprisonment for thirty-two years.

Texas Rule of Appellate Procedure 26.2 provides that an appeal is perfected when notice of appeal is filed within thirty days after sentence is imposed in open court. TEX. R. APP. P. 26.2(a)(1). When, as here, a motion for new trial is filed, the notice of appeal must be filed within ninety days after sentence is imposed in open court. TEX. R. APP. P. 26.2(a)(2). Sentence was imposed in open court on October 21, 2011, and Appellant timely filed a motion for new trial. Therefore, Appellant's notice of appeal was due to have been filed on or before January 19, 2012. However, Appellant did not file his notice of appeal until February 9, 2012, 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 February 24, 2012, 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 March 5, 2012, the information filed in this appeal was amended to show the jurisdiction of this court. In response to this court's February 24 notice, Appellant filed a motion to amend his notice of appeal to assert a nonjurisdictional ground of error, which in his view would establish the jurisdiction of this court. He further requests that we abate the appeal and remand the cause to the trial court for a hearing to recertify his right to appeal. However, Appellant's notice of appeal was untimely, and Appellant has included nothing in his motion to overcome this jurisdictional defect.

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 motion to amend his notice of appeal is overruled, and the appeal is ***dismissed for want of jurisdiction.***

Opinion delivered March 7, 2012.

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**

MARCH 7, 2012

NO. 12-12-00068-CR

MICHAEL BRADBERRY,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 173rd Judicial District Court
of Cherokee County, Texas. (Tr.Ct.No. 17,522)

THIS CAUSE came to be heard on the oral arguments, appellate record and briefs filed herein; and the same being considered, it is the opinion of this court that this court is without jurisdiction of the appeal, and that the appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this court that this appeal be, and the same is, hereby **dismissed for want of jurisdiction**; and that this decision 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 173RD DISTRICT COURT of CHEROKEE COUNTY, GREETING:

Before our Court of Appeals for the 12th Court of Appeals District of Texas, on the 7th day of March, 2012, the cause upon appeal to revise or reverse your judgment between

MICHAEL BRADBERRY, Appellant

NO. 12-12-00068-CR; Trial Court No. 17,522

By *per curiam* opinion.

THE STATE OF TEXAS, Appellee

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

“THIS CAUSE came to be heard on the oral arguments, appellate record and briefs filed herein; and the same being considered, it is the opinion of this court that this court is without jurisdiction of the appeal, and that the appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this court that this appeal be, and the same is, hereby dismissed for want of jurisdiction; and that this decision 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 _____, 201____.



CATHY S. LUSK, CLERK

By: _____
Deputy Clerk