

NO. 12-13-00056-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***TOMMY RAY BUTLER, SR.,
APPELLANT***

§

APPEAL FROM THE 159TH

V.

§

JUDICIAL DISTRICT COURT

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

§

ANGELINA COUNTY, TEXAS

***MEMORANDUM OPINION
PER CURIAM***

This appeal is being dismissed for want of jurisdiction. Appellant attempts to appeal the trial court's order denying his motion for postconviction forensic DNA testing.

As pertinent to this case, Texas Rule of Appellate Procedure 26.2 provides that an appeal is perfected when notice of appeal is filed within thirty days after the trial court enters an appealable order. TEX. R. APP. P. 26.2(a)(1). The trial court entered its order denying Appellant's motion for postconviction forensic DNA testing on June 7, 2010. Therefore, Appellant's notice of appeal was due to have been filed on or before July 7, 2010. However, Appellant did not file his notice of appeal until February 19, 2013, 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 20, 2013, 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 4, 2013, the information filed in this appeal was amended to show the jurisdiction of this court. The deadline has passed, and Appellant has neither shown the jurisdiction of this court nor otherwise responded to its February 20, 2013 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 March 13, 2013.

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(DO NOT PUBLISH)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 13, 2013

NO. 12-13-00056-CR

TOMMY RAY BUTLER, SR.,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 159th Judicial District Court
of Angelina County, Texas. (Tr.Ct.No. 16,567)

THIS CAUSE came to be heard on the appellate record; 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.