

NO. 12-18-00007-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***KRISTI LEE LOEWE,
APPELLANT***

§ ***APPEAL FROM THE 349TH***

V.

§ ***JUDICIAL DISTRICT COURT***

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

§ ***HOUSTON COUNTY, TEXAS***

***MEMORANDUM OPINION
PER CURIAM***

Appellant, Kristi Lee Loewe, pleaded guilty to driving while intoxicated with a child passenger and the trial court sentenced her to confinement in state jail for eighteen months. The sentence was imposed on October 26, 2017. Under the rules of appellate procedure, the notice of appeal must be filed within thirty days after the trial court enters an appealable order. *See* TEX. R. APP. P. 26.2(a)(1). The clerk's record does not indicate that Appellant filed a motion for new trial. *See* TEX. R. APP. P. 26.2(a)(2). Therefore, Appellant's notice of appeal was due to have been filed no later than November 27, 2017. Appellant filed her notice of appeal on December 5, 2017. That same day, Appellant filed a motion for out of time appeal with the trial court. The trial court granted the motion on January 4, 2018.

On January 19, this Court notified Appellant that the information received in this appeal does not show the jurisdiction of this Court, i.e., there was no timely filed notice of appeal or motion for extension of time to file a notice of appeal. *See* TEX. R. APP. P. 26.2, 26.3. We further notified Appellant that the appeal would be dismissed unless the information was amended on or before January 29 to show the Court's jurisdiction. This deadline has now passed, and Appellant has neither shown the jurisdiction of this Court nor otherwise responded to the January 19 notice.

We may extend the time to file the notice of appeal if, within fifteen days of the filing deadline, the party files in the trial court the notice of appeal and in the appellate court a motion complying with Rule 10.5(b), TEX. R. APP. P. 26.3. Appellant met the first requirement, but not the second. Accordingly, we have no authority to extend Appellant’s notice of appeal deadline.

The Texas Court of Criminal Appeals has the “exclusive authority to grant post-felony conviction relief, such as an out-of-time appeal, if the defendant is then confined as a result of that final felony conviction.” *Parr v. State*, 206 S.W.3d 143, 145 (Tex. App.—Waco 2006, no pet.)¹; see *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241, 243 (Tex. Crim. App. 1991). In this case, the trial court sentenced Appellant to eighteen months in state jail for the offense of driving while intoxicated with a child, a state jail felony, and ordered the sentence executed. See TEX. PENAL CODE ANN. § 49.045 (West 2011) (driving while intoxicated with a child passenger is a state jail felony). Thus, the trial court was not authorized to grant Appellant an out of time appeal. See *Parr*, 206 S.W.3d at 145 (“Because Parr’s felony conviction is final and he was in custody pursuant to that conviction at the time the application for writ of habeas corpus was filed and heard, the district court did not have the authority to grant an out-of-time appeal[.]”); see also *Hogg v. State*, No. 11-16-00144-CR, 2016 WL 3382475, at *1-2 (Tex. App.—Eastland June 16, 2016, pet. ref’d) (mem. op., not designated for publication) (dismissing appeal for want of jurisdiction because trial court lacked authority to grant appellant an out of time appeal).

Because this Court is not authorized to extend the time for perfecting an appeal except as provided by the Texas Rules of Appellate Procedure, we *dismiss* the appeal for *want of jurisdiction*. See *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998); see also *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996).

Opinion delivered January 31, 2018.

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

(DO NOT PUBLISH)

¹ Parr subsequently sought and obtained permission to file an out of time appeal from the court of criminal appeals. See *Ex parte Parr*, No. AP-75,713, 2007 WL 1776006, at *1 (Tex. Crim. App. June 20, 2007) (not designated for publication).



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JANUARY 31, 2018

NO. 12-18-00007-CR

KRISTI LEE LOEWE,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 349th District Court
of Houston County, Texas (Tr.Ct.No. 16CR-204)

THIS CAUSE came on to be heard on the appellate record, and the same being considered, it is the opinion of this Court that it 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., Hoyle, J. and Neeley, J.