

**Dismissed and Opinion filed February 14, 2002.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-01-00254-CR**

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**EFRAIN GARZA, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 184th District Court  
Harris County, Texas  
Trial Court Cause No. 842,069**

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**OPINION**

Appellant pled guilty to felony charges of driving while intoxicated on January 8, 2001. In accordance with the terms of a plea bargain agreement with the State, the trial court sentenced appellant to six years' probation. Because we have no jurisdiction over this appeal, we dismiss.

Appellant filed a notice of appeal that did not comply with the requirements of Rule 25.2(b)(3) of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 25.2(b)(3). Rule 25.2(b)(3) provides that when an appeal is from a judgment rendered on a defendant's plea

of guilty or nolo contendere and the punishment assessed does not exceed the punishment recommended by the State and agreed to by the defendant, the notice of appeal must: (1) specify that the appeal is for a jurisdictional defect; (2) specify that the substance of the appeal was raised by written motion and ruled on before trial; or (3) state that the trial court granted permission to appeal. *Id.* The rule does not mean, however, that an appellate court's jurisdiction is properly invoked by the filing of a specific notice of appeal complying only in form with the extra-notice requirements of Rule 25.2(b)(3). *Betz v. State*, 36 S.W.3d 227, 228 (Tex. App.—Houston [14th Dist.] 2001, no pet.); *Sherman v. State*, 12 S.W.3d 489, 492 (Tex. App.—Dallas 1999, no pet.). An appellant must, in good faith, comply in both form and substance with the extra-notice requirements of the rule. *Id.*; see *Manuel v. State*, 994 S.W.2d 658, 662 (Tex. Crim. App. 1999) (stating that appellant's general notice of appeal could not truthfully state that the trial court had given permission to appeal). Not only must the specific notice of appeal recite the applicable extra-notice requirements, the record must substantiate the recitations in the notice of appeal. See *Betz*, 36 S.W.3d at 228-29; *Sherman*, 12 S.W.3d at 492. Statements required by the rule to be in the notice of appeal must be true to confer jurisdiction; mere allegations are not sufficient. *Sherman*, 12 S.W.3d at 492. Noncompliance, in either form or substance, results in a failure to properly invoke the appellate court's jurisdiction over an appeal to which Rule 25.2(b)(3) is applicable. *Id.*

Here, appellant filed a notice of appeal claiming he sought to appeal the substance of a motion to withdraw his plea of guilty. The notice of appeal further alleged that the motion to withdraw his plea was filed "before the case was taken under advisement or sentence imposed." However, the record does not support this allegation. In this case, appellant appeared at trial accompanied by defense counsel, waived his constitutional rights, stipulated to evidence in support of his plea, and then pled guilty to the charged offense. The trial court admonished appellant of the consequences of his plea, ascertained that he had freely and voluntarily entered his plea, and reset the case for sentencing. Three days later, at the sentencing hearing, appellant filed a motion to withdraw his plea of guilty, alleging that it

was involuntary and based on erroneous advice of counsel. However, this motion was not filed until after the trial court took appellant's plea of guilty under advisement and thus cannot be considered a pretrial motion from which an appeal may be taken in compliance with the rules of appellate procedure. *See* TEX. R. APP. P. 25.2(b)(3)(B); *see generally Jackson v. State*, 590 S.W.2d 514, 515 (Tex. Crim. App. 1979) (finding once a plea has been entered, the case has been taken under advisement despite the fact that punishment has not been assessed).

Moreover, because the time for filing a proper notice of appeal has expired, appellant may not file an amended notice of appeal to correct jurisdictional defects. *State v. Riewe*, 13 S.W.3d 408, 413-14 (Tex. Crim. App. 2000). Because appellant's notice of appeal did not comply in substance with the requirements of Rule 25.2(b)(3), we are without jurisdiction to consider any of appellant's issues, including the voluntariness of the plea. *See Cooper v. State*, 45 S.W.3d 77, 83 (Tex. Crim. App. 2001) (holding that appellant who files general notice of appeal may not appeal voluntariness of negotiated plea).

Accordingly, we dismiss the appeal for want of jurisdiction.

/s/ Leslie Brock Yates  
Justice

Judgment rendered and Opinion filed February 14, 2002.

Panel consists of Justices Yates, Seymore, and Guzman.

Do Not Publish — TEX. R. APP. P. 47.3(b).