

Dismissed and Opinion filed April 5, 2001.



In The

**Fourteenth Court of Appeals**

-----  
NO. 14-98-01340-CR  
-----

**HECTOR AARON LOPEZ-CRUZ, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

---

**On Appeal from the 176<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 788,998**

---

**OPINION**

After a guilty plea, appellant was convicted of the offense of aggravated sexual assault of a child. On October 14, 1998, he was sentenced to ten years in the Texas Department of Criminal Justice--Institutional Division. No motion for new trial was filed. Appellant's notice of appeal was not mailed to the district clerk until November 23, 1998.

A defendant's notice of appeal must be filed within thirty days after sentence is imposed when the defendant has not filed a motion for new trial. TEX. R. APP. P. 26.2(a)(1). A notice of appeal complying with the requirements of Appellate Rule 26 is essential to vest this court with jurisdiction. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998). If an appeal is not timely perfected, a court of appeals does not obtain jurisdiction to address the

merits of the appeal. Under those circumstances it can take no action other than to dismiss the appeal. *See id.*

In this case, appellant mailed his notice of appeal to the district clerk. The envelope, which is included in the record, shows it was postmarked November 23, 1998. A document is considered timely filed if: (1) it is sent to the proper clerk by United State's Postal Service first-class, express, registered, or certified mail; (2) it is placed in an envelope or wrapper properly addressed and stamped; (3) it is deposited in the mail on or before the last day for filing; and (4) it is received within ten days after the filing deadline. TEX. R. APP. P. 9.2(b)(1). Appellant failed to comply with the third requirement.

A legible postmark affixed by the United States Postal Services will be accepted as conclusive proof of the date of mailing. TEX. R. APP. P. 9.2(b)(2). Appellant was sentenced on October 14, 1998, therefore, his notice of appeal was due November 14, 1998. The envelope in which appellant mailed the notice of appeal is postmarked November 23, 1998 and did not comply with Appellate Rule 9.2. TEX. R. APP. P. 9.2(b). Thus, appellant's notice of appeal was untimely.

Accordingly, the appeal is ordered dismissed.

/s/     Ross A. Sears  
           Justice

Judgment rendered and Opinion filed April 5, 2001.

Panel consists of Justices Sears, Cannon, and Hutson-Dunn.\*

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

---

\* Senior Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.