

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-20-00172-CR

Roberto Gonzalez a/k/a Ruperto Gonzalez, Appellant

v.

The State of Texas, Appellee

**FROM THE 421ST DISTRICT COURT OF CALDWELL COUNTY,
NO. 18-081, THE HONORABLE F. C. "CHRIS" SCHNEIDER, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Roberto Gonzalez a/k/a Ruperto Gonzalez seeks to appeal from a judgment of conviction for murder. *See* Tex. Penal Code § 19.02. Gonzalez's sentence was imposed on November 21, 2019. A motion for new trial was timely filed on November 21, 2019. Therefore, the deadline for filing the notice of appeal was February 19, 2020, 90 days after sentencing. *See* Tex. R. App. P. 26.2(a)(2). On March 2, 2020, Gonzalez filed in the trial court his notice of appeal and a motion to extend time to file the notice of appeal. On May 19, 2020, Gonzalez filed an unopposed motion for extension of time to file his notice of appeal in this Court.

The Texas Rules of Appellate Procedure allow an appellate court to extend the time to file the notice of appeal if, within 15 days after the deadline for filing the notice of appeal, the party (1) files the notice of appeal in the trial court and (2) files a motion for extension of time to file the notice of appeal in the appellate court. *See* Tex. R. App. P. 26.3. Here, the notice of appeal was filed in the trial court within the 15-day grace period, which ended

on March 5, 2020. A motion for extension was filed at the same time but was erroneously filed in the trial court. A subsequent motion for extension was filed in this Court—the proper court—but not until 90 days after the deadline had passed for filing the notice of appeal. We are without authority to extend the time to file the notice of appeal unless a motion for extension of time has been timely filed in the court of appeals. *See, e.g., Jones v. State*, 900 S.W.2d 421, 423 (Tex. App.—Texarkana 1995, no pet.) (holding that motion for extension of time filed on last day of 15-day grace period but erroneously filed in trial court, not court of appeals, did not invoke appellate court’s jurisdiction). The Texas Court of Criminal Appeals, citing *Jones* with approval, confirmed that:

[A] late notice of appeal may be considered timely so as to invoke a court of appeals’ jurisdiction if (1) it is filed within fifteen days of the last day allowed for filing, (2) a motion for extension of time is filed *in the court of appeals* within fifteen days of the last day allowed for filing the notice of appeal, and (3) the court of appeals grants the motion for extension of time.

Olivo v. State, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996) (emphasis added). Gonzalez suggests that this Court can use Texas Rule of Appellate Procedure 2 to deem the motion for extension as being filed in the proper court, but the Texas Court of Criminal Appeals has rejected this approach. *See Slaton v. State*, 981 S.W.2d 208, 209 (Tex. Crim. App. 1998) (affirming continuing applicability under current Rule 2 of *Olivo*’s reasoning that “[w]ithout a timely filed notice of appeal, a court of appeals lacks jurisdiction over the appeal, and therefore, lacks the power to invoke [former] Rule 2b in an effort to obtain jurisdiction of the case”). Accordingly, the motion for extension of time to file the notice of appeal is denied.

The timely filing of a written notice of appeal is essential to vest this Court with jurisdiction. *Castillo v. State*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2012); *see Slaton*, 981 S.W.2d at 210 (“A notice of appeal which complies with the requirements of Tex. R. App.

P. 26 is essential to vest the court of appeals with jurisdiction. If an appeal is not timely perfected, a court of appeals does not obtain jurisdiction to address the merits of the appeal.”). Because Gonzalez failed to timely file a notice of appeal in compliance with Rule 26, we lack jurisdiction to dispose of this attempted appeal in any manner other than by dismissing it for want of jurisdiction. *See, e.g., Castillo*, 369 S.W.3d at 202 (holding appellate court lacked jurisdiction because “just one day late . . . is enough to deprive the appellate court of jurisdiction to consider appellant’s appeal under the Texas Rules of Appellate Procedure”). We therefore dismiss the appeal for lack of jurisdiction.

Edward Smith, Justice

Before Justices Goodwin, Kelly, and Smith

Dismissed for Want of Jurisdiction

Filed: June 26, 2020

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