



NUMBER 13-20-00260-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

VALENTIN TORRES ALVAREZ,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 103rd District Court
of Cameron County, Texas.**

MEMORANDUM OPINION

**Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Perkes**

On June 30, 2020, Valentin Torres Alvarez, proceeding pro se, filed a motion in this cause requesting an out-of-time appeal. According to the district clerk's office, Alvarez was convicted of the felony offenses of continuous sexual abuse of a child and prohibited sexual conduct by sentence imposed on June 7, 2018. See TEX. PENAL CODE ANN. §§

21.02, 25.02(c). The Texas Court of Criminal Appeals has instructed us to liberally construe rules related to the perfection of an appeal. See *Harkcom v. State*, 484 S.W.3d 432, 433 (Tex. Crim. App. 2016); *Few v. State*, 230 S.W.3d 184, 190 (Tex. Crim. App. 2007). Therefore, we liberally construe appellant's motion for an out-of-time appeal as a notice of appeal. See *Harkcom*, 484 S.W.3d at 433; *Few*, 230 S.W.3d at 190. However, we lack jurisdiction over the appeal because it is untimely, and we similarly lack jurisdiction to grant appellant's request for an out-of-time appeal. Accordingly, we dismiss this appeal and all relief sought therein.

A timely notice of appeal is necessary to invoke this Court's jurisdiction. *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). In a criminal case, a defendant's notice of appeal is due within thirty days after the day sentence is imposed in open court, or ninety days after the sentence is imposed in open court if the defendant timely files a motion for new trial. See TEX. R. APP. P. 26.2(a)(1),(2). While a court of appeals may extend the time to file the notice of appeal, both the notice of appeal and the motion for extension of time must be filed within fifteen days after the deadline for filing the notice of appeal. See *id.* R. 26.3. In the absence of a timely filed notice of appeal, a court of appeals does not have jurisdiction to address the merits of the appeal in a criminal case and can take no action other than to dismiss the appeal for want of jurisdiction. See *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998).

Here, Alvarez's motion for out-of-time appeal, construed as a notice of appeal, was filed more than two years after sentence was imposed, and is thus not timely. See TEX. R. APP. P. 26.2(a)(1),(2). Further, only the Texas Court of Criminal Appeals has jurisdiction to grant Alvarez an out-of-time appeal for his felony conviction. See *Ater v.*

Eighth Court of Appeals, 802 S.W.2d 241 (Tex. Crim. App. 1991) (explaining that a writ of habeas corpus pursuant to Article 11.07 of the Texas Code of Criminal Procedure governs out-of-time appeals from felony convictions). Accordingly, we dismiss the appeal and all relief sought therein for lack of jurisdiction.

GREGORY T. PERKES
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
15th day of July, 2020.