

**COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI-EDINBURG**

Adan Esquibel v. The State of Texas

Esquibel · No. 13-09-00505-CV · Decided December 21, 2009

SUMMARY

The Thirteenth Court of Appeals of Texas dismissed Adan Esquibel’s appeal for want of jurisdiction because the notice of appeal was filed after the applicable deadline and outside the fifteen-day grace period for requesting an extension. The court denied the motion for extension of time and held that the appellate filing deadlines were jurisdictional.

OPINION

PER CURIAM.

NUMBER 13-09-00505-CV COURT OF APPEALS THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI - EDINBURG

____ ADAN ESQUIBEL,
Appellant, v. THE STATE OF TEXAS, Appellee.
____ On appeal from the
County Court at Law No. 2 of Hidalgo County, Texas.

MEMORANDUM

OPINION Before Chief Justice Valdez and Justices Rodriguez and Garza Memorandum Opinion
Per Curiam Appellant, Adan Esquibel, attempted to perfect an appeal from a judgment entered by
the County Court at Law No. 2 in Hidalgo County, Texas, in cause number F-2923-00-2.

Judgment in this cause was signed on November 4, 2008. No motion for new trial was filed.
Pursuant to Texas Rule of Appellate Procedure 26.1, appellant’s notice of appeal was due on
December 4, 2008, but was not filed until July 31, 2009. A motion for extension of time is
necessarily implied when an appellant, acting in good faith, files a notice of appeal beyond the
time allowed by rule 26.1, but within the fifteen-day grace period provided by Rule 26.3 for filing
a motion for extension of time.

See *Verburtg v. Dorner*, 959 S.W.2d 615, 617-18, 619 (1997) (construing the predecessor to Rule
26). However, appellant must provide a reasonable explanation for the late filing: it is not enough
to simply file a notice of appeal. *Id.*; *Woodard v. Higgins*, 140 S.W.3d 462, 462 (Tex. App.–
Amarillo 2004, no pet.); *In re B.G.*, 104 S.W.3d 565, 567 (Tex. App.–Waco 2002, no pet.).

On September 4, 2009, the Clerk of this Court notified appellant of this defect so that steps could be taken to correct the defect, if it could be done. Appellant was advised that, if the defect was not corrected within fifteen days from the date of the Court's letter, the appeal would be dismissed.

On September 21, 2009, appellant filed a letter stating that his environment did not allow him expediency, asking if he should file a motion for extension of time to comply and filed an application to proceed in forma pauperis. This Court construes appellant's September 21, 2009 filings as a motion for extension of time to file the appeal, however the notice of appeal was not filed within the fifteen-day grace period.

The times for filing a notice of appeal are jurisdictional, and absent a timely filed notice of appeal or an extension request, we must dismiss the appeal. See TEX. R. APP. P. 2, 25.1(b), 26.3; *Verburt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (holding that once extension period has passed, a party can no longer invoke an appellate court's jurisdiction); see also *Barrera v. Canales*, No. 04-01-00221-CV, 2001 Tex. App.

LEXIS 3878, *2 (Tex. App.—San Antonio June 13, 2001, no pet.) (per curiam). The Court, having examined and fully considered the documents on file, is of the opinion that the appeal should be dismissed for want of jurisdiction.

Accordingly, appellant's motion for extension of time to file notice of appeal is DENIED, and the appeal is hereby DISMISSED FOR WANT OF JURISDICTION. See TEX. R. APP. P. 42.3(a)(c). PER CURIAM Delivered and filed the 21st day of December, 2009. 3