

FOURTH COURT OF APPEALS OF TEXAS

Elidoro Munguia III v. State

No. 04-21-00139-CR · No. 04-21-00139-CR · Decided April 14, 2021

SUMMARY

The Fourth Court of Appeals of San Antonio ordered the appellant to show cause why his appeal should not be dismissed for lack of jurisdiction. The court noted that the notice of appeal was filed after the deadline without a motion for extension and that the trial court's certification indicated the case was a plea-bargain case with no right of appeal.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas
JURISDICTION	Texas
DECIDED	April 14, 2021
DOCKET	04-21-00139-CR
DISPOSITION	other
PROCEDURAL POSTURE	The court of appeals issued an order requiring the appellant to show cause why the appeal should not be dismissed for lack of jurisdiction because the notice of appeal appeared untimely and no motion for extension of time had been filed.
PRECEDENTIAL VALUE	Published
PARTIES	Elidoro Munguia III v. The State of Texas

TOPICS

- appellate jurisdiction
- appellate procedure
- criminal procedure
- plea bargaining

PRACTICE AREAS

- Texas criminal appellate procedure
- criminal procedure

QUESTIONS PRESENTED

1. Whether the court of appeals had jurisdiction when the notice of appeal was filed after the deadline and no motion for extension of time was filed.

2. Whether the trial court's certification accurately reflected that the case was a plea-bargain case in which appellant had no right of appeal.

HOLDINGS

1. A timely notice of appeal is necessary to invoke the jurisdiction of a Texas court of appeals. A late notice may be treated as timely only if it is filed within fifteen days after the filing deadline, a motion for extension is filed in the court of appeals within that same fifteen-day period, and the court grants the extension.
2. The trial court's certification accurately stated that appellant had no right of appeal because the case was a plea-bargain case, the record contained a written plea bargain, and the punishment assessed did not exceed the punishment recommended by the prosecutor and agreed to by appellant.

KEY QUOTATIONS

“A timely notice of appeal is necessary to invoke a court of appeals’ jurisdiction.”

“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.”

FACTUAL BACKGROUND

The trial court imposed sentence on October 30, 2020. Appellant did not file a motion for new trial, filed the notice of appeal on April 5, 2021, and did not file a motion for extension of time. The record also contained a written plea bargain under which the punishment assessed did not exceed the punishment recommended by the prosecutor and agreed to by appellant.

PROCEDURAL HISTORY

The trial court imposed sentence on October 30, 2020, in Bexar County cause number 2020CR6173. Because no motion for new trial was filed, the notice of appeal was due November 30, 2020, and any extension motion was due December 14, 2020. Appellant filed the notice of appeal on April 5, 2021, without an extension motion. The appellate court ordered appellant to show cause by May 14, 2021, why the appeal should not be dismissed for lack of jurisdiction.

DISPOSITION

other

CASES CITED

- Olivo v. State, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996)
- Ater v. Eighth Court of Appeals, 802 S.W.2d 241 (Tex. Crim. App. 1991)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas April 14, 2021 No. 04-21-00139-CR Elidoro MUNGUIA, Appellant v. THE STATE OF TEXAS, Appellee From the 144th Judicial District Court, Bexar County, Texas Trial Court No. 2020CR6173 Honorable Raymond Angelini, Judge Presiding ORDER The trial court imposed sentence in the underlying cause on October 30, 2020.

Because appellant did not file a motion for new trial, the notice of appeal was due by November 30, 2020. TEX. R. APP. P. 26.2(a)(1). A motion for extension of time to file the notice of appeal was due by December 14, 2020. See *id.* R. 26.3. Appellant filed a notice of appeal on April 5, 2021, but appellant did not file a motion for extension of time. A timely notice of appeal is necessary to invoke a court of appeals' jurisdiction.

See *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). 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.

See *id.* Having reviewed the record, it appears that the notice of appeal was untimely filed, and no motion for extension of time was filed. We therefore ORDER appellant to show cause in writing why this appeal should not be dismissed for lack of jurisdiction by May 14, 2021.¹ See 1 We also note the trial court's certification in this appeal states that "this criminal case is a plea-bargain case, and the defendant has NO right of appeal." The clerk's record contains a written plea bargain, and the punishment assessed did not exceed the punishment recommended by the prosecutor and agreed to by the defendant; therefore, the trial court's certification accurately reflects that the criminal case is a plea-bargain case.

See TEX. R. APP. P. 25.2(a)(2). Rule 25.2(d) of the Texas Rules of Appellate Procedure provides, "The appeal must be dismissed if a *id.*; see also *Ater v. Eighth Court of Appeals*, 802 S.W.2d 241 (Tex. Crim. App. 1991) (out-of- time appeal from final felony conviction may be sought by filing a writ of habeas corpus pursuant to article 11.07 of the Texas Code of Criminal Procedure).

Beth Watkins, Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 14th day of April, 2021.

MICHAEL A. CRUZ, Clerk of Court certification that shows the defendant has a right of appeal has not been made part of the record under these rules." TEX. R. APP.

P. 25.2(d).

