

COURT OF APPEALS FOR THE SECOND APPELLATE DISTRICT OF TEXAS
AT FORT WORTH

Sergio Guadal Maresmartinez v. The State of Texas

Maresmartinez · No. 02-26-00073-CR · Decided May 7, 2026

SUMMARY

The Second Court of Appeals of Texas dismissed Sergio Guadal Maresmartinez’s attempted appeal from convictions for sexual assault of a child and indecency with a child because his notice of appeal was untimely. Although the Court of Criminal Appeals had granted permission for an out-of-time appeal, Maresmartinez had not filed a new notice of appeal as required, leaving the appellate court without jurisdiction.

CASE DETAILS

COURT	Court of Appeals for the Second Appellate District of Texas at Fort Worth
WRITING FOR THE COURT	Birdwell; Bassel; Womack
JURISDICTION	Court of Appeals for the Second Appellate District of Texas at Fort Worth
DECIDED	May 7, 2026
DOCKET	02-26-00073-CR
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant attempted to appeal his convictions, but the court dismissed the appeal for want of jurisdiction because the notice of appeal was untimely.
STANDARD OF REVIEW	The court reviewed its appellate jurisdiction based on the timeliness of the notice of appeal.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Sergio Guadal Maresmartinez v. The State of Texas

TOPICS

- appellate jurisdiction
- appellate procedure
- post-conviction relief
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court of appeals had jurisdiction over an appeal filed after the deadline for filing a notice of appeal.
2. Whether appellant's response, including his assertion that the Court of Criminal Appeals had granted permission for an out-of-time appeal, established grounds for continuing the existing appeal.

HOLDINGS

1. A timely notice of appeal is an essential component of the court of appeals' jurisdiction; because appellant's notice was untimely, the court lacked jurisdiction and had to dismiss the appeal.
2. An order granting an out-of-time appeal does not preserve the untimely existing appeal; the appellant must file a new notice of appeal to begin the appellate process.

KEY QUOTATIONS

“Because Maresmartinez’s appeal was untimely and because a timely notice of appeal is an essential component of our jurisdiction, we dismiss this appeal for want of jurisdiction.” (2)

“The granting of an out-of-time appeal returns the appellant to the point at which he can begin the appellate process; thus, to be entitled to an out-of-time appeal ordered by a higher court, an appellant must file a new notice of appeal.” (2 n.2)

FACTUAL BACKGROUND

Appellant was convicted of two counts of sexual assault of a child and two counts of indecency with a child by sexual contact. Sentence was imposed on June 29, 2023, but appellant did not file his notice of appeal until February 27, 2026, well after the applicable deadline.

PROCEDURAL HISTORY

The 372nd District Court of Tarrant County entered sentence on June 29, 2023, after convictions for two counts of sexual assault of a child and two counts of indecency with a child by sexual contact. Because appellant did not file a motion for new trial, his notice of appeal was due July 31, 2023, but he filed it on February 27, 2026. The court warned that the untimely notice deprived it of jurisdiction, considered appellant's response, and dismissed the appeal. The court withdrew its April 16, 2026 opinion and substituted this memorandum opinion.

DISPOSITION

dismissed

CASES CITED

- Slaton v. State, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998)

- Carmell v. State, 331 S.W.3d 450, 458 (Tex. App.—Fort Worth 2010, pet. ref'd)

OPINION

PER CURIAM.

In the Court of Appeals Second Appellate District of Texas at Fort Worth
_____ No. 02-26-00073-CR _____

SERGIO GUADAL MARESMARTINEZ, Appellant V. THE STATE OF TEXAS On Appeal from the 372nd District Court Tarrant County, Texas Trial Court No. 1665547 Before Birdwell, Bassel, and Womack, JJ. Per Curiam Substitute Memorandum Opinion SUBSTITUTE MEMORANDUM OPINION 1 Appellant Sergio Guadal Maresmartinez attempts to appeal his conviction for two counts of sexual assault of a child and two counts of indecency with a child by sexual contact.

See Tex. Penal Code §§ 21.11, 22.011(a)(2). Maresmartinez's sentence was imposed on June 29, 2023. He did not file a motion for new trial, making his notice of appeal due by July 31, 2023. See Tex. R. App. P. 26.2(a); see also Tex. R. App. P. 4.1 (extending filing deadline when last day falls on a Saturday or Sunday).

However, Maresmartinez did not file his notice of appeal until February 27, 2026, making it untimely. See Tex. R. App. P. 26.2(a). We notified Maresmartinez of our concern that we lack jurisdiction over this appeal because his notice of appeal was untimely.

We warned him that unless he filed a response showing grounds for continuing the appeal, it could be dismissed for want of jurisdiction. See Tex. R. App. P. 44.3. Maresmartinez filed a response, but it does not show grounds for continuing the appeal.² 1 On the court's own motion, we withdraw our April 16, 2026 opinion and substitute this opinion in its place.

2 In his response, Maresmartinez asserted that he filed an Article 11.07 application for writ of habeas corpus requesting an out-of-time appeal. See Tex. Code Crim. Proc. art. 11.07. After we issued our prior opinion and judgment, we received from the trial court the Court of Criminal Appeals' (CCA) opinion on Maresmartinez's application, handed down April 9, 2026, granting him permission to file an out-of-time appeal.

In its opinion, the CCA instructed the trial court to determine, within ten days, whether Maresmartinez is indigent and whether he wants to be represented by counsel and, if so, to appoint appellate counsel. The CCA also instructed Maresmartinez that, should he decide to appeal, he "must file a written 2 Because Maresmartinez's appeal was untimely and because a timely notice of appeal is an essential component of our jurisdiction, we dismiss this appeal for want of jurisdiction.

See Tex. R. App. P. 26.2(a), 43.2(f); Slaton v. State, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998). Per Curiam Do Not Publish Tex. R. App. P. 47.2(b) Delivered: May 7, 2026 notice of appeal in the

trial court within thirty days from the date of th[e CCA's] mandate.” See, e.g., *Carmell v. State*, 331 S.W.3d 450, 458 (Tex. App.—Fort Worth 2010, pet. ref’d) (“The granting of an out-of-time appeal returns the appellant to the point at which he can begin the appellate process; thus, to be entitled to an out-of-time appeal ordered by a higher court, an appellant must file a new notice of appeal.”).