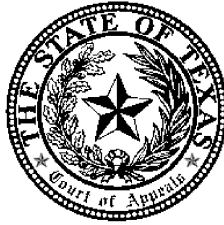


Dismissed and Opinion filed March 21, 2002.



In The
Fourteenth Court of Appeals

NO. 14-02-00139-CR

KELVIN JORAD PATTERSON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 888,716**

MEMORANDUM OPINION

Appellant entered a guilty plea to the offense of murder on January 10, 2002. In accordance with the terms of a plea bargain agreement with the State, the trial court sentenced appellant to life in prison. As part of the plea bargain agreement, appellant signed a written waiver of his right to appeal. We dismiss.

To invoke an appellate court's jurisdiction over an appeal, an appellant must give timely and proper notice of appeal. *White v. State*, 61 S.W.3d 424, 428 (Tex. Crim. App. 2001). Appellant filed a pro se notice of appeal that did not comply with the requirements of Rule 25.2(b)(3) of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P.

25.2(b)(3). Rule 25.2(b)(3) provides that when an appeal is from a judgment rendered on a defendant's plea of guilty or nolo contendere and the punishment assessed does not exceed the punishment recommended by the State and agreed to by the defendant, the notice of appeal must: (1) specify that the appeal is for a jurisdictional defect; (2) specify that the substance of the appeal was raised by written motion and ruled on before trial; or (3) state that the trial court granted permission to appeal. *Id.*

An appellant must, in good faith, comply in both form and substance with the extra-notice requirements of the rule. *Betz v. State*, 36 S.W.3d 227, 228 (Tex. App.—Houston [14th Dist.] 2001, no pet.); *Sherman v. State*, 12 S.W.3d 489, 492 (Tex. App.—Dallas 1999, no pet.); see *Manuel v. State*, 994 S.W.2d 658, 662 (Tex. Crim. App. 1999) (stating that appellant's general notice of appeal could not truthfully state that trial court had given permission to appeal). Not only must the specific notice of appeal recite the applicable extra-notice requirements, the record must substantiate the recitations in the notice of appeal and the issues raised in the brief must relate to the specific claims in the notice of appeal. See *Betz*, 36 S.W.3d at 228-29; *Sherman*, 12 S.W.3d at 492. Statements required by the rule to be in the notice of appeal must be *true* to confer jurisdiction; mere allegations are not sufficient. *Sherman*, 12 S.W.3d at 492. (emphasis in the original). Noncompliance, in either form or substance, results in a failure to properly invoke the appellate court's jurisdiction over an appeal to which Rule 25.2(b)(3) is applicable. *Id.*

Appellant's notice of appeal failed to invoke this Court's jurisdiction. The notice of appeal states "the trial court granted permission to appeal; . . . the appeal is for a jurisdictional defect; and that the substance of the appeal was raised by written motion and ruled on before trial." While this language complies with the form requirements of Rule 25.2(b)(3), the record fails to substantiate these recitations. See *id.* The time for filing a proper notice of appeal has expired; thus appellant may not file an amended notice of appeal to correct jurisdictional defects. *State v. Riewe*, 13 S.W.3d 408, 413-14 (Tex. Crim. App. 2000). Because appellant's notice of appeal did not comply with the requirements of Rule

25.2(b)(3), we are without jurisdiction to consider any of appellant's issues, including the voluntariness of the plea. *See Cooper v. State*, 45 S.W.2d 77, 83 (Tex. Crim. App. 2001).

Appellant entered a plea of guilty and the trial court followed the plea bargain agreement in assessing punishment. Despite having waived the right to appeal as part of that agreement, appellant filed a notice of appeal. Appellant chose to enter into an agreement that included a waiver of the right to appeal. Appellant was informed of his right to appeal, knew with certainty the punishment he would receive, and that he could withdraw his plea if the trial court did not act in accordance with the plea agreement. As appellant was fully aware of the consequences when he waived his right to appeal, it is "not unfair to expect him to live with those consequences now." *Alzarka v. State*, 60 S.W.3d 203, 206 (Tex. App.—Houston [14th Dist.] July 26, 2001, pet. granted) (quoting *Mabry v. Johnson*, 467 U.S. 504, 104 S.Ct. 2543, 2547-48, 81 L.Ed.2d 437 (1984)). *See also Blanco v. State*, 18 S.W.3d 218, 219-20 (Tex. Crim. App. 2000); *Buck v. State*, 45 S.W.3d 275, 278 (Tex. App.—Houston [1st Dist.] 2001, no pet.).

Accordingly, for all these reasons, we dismiss the appeal.

PER CURIAM

Judgment rendered and Opinion filed March 21, 2002.

Panel consists of Chief Justice Brister and Justices Anderson and Frost.

Do Not Publish — TEX. R. APP. P. 47.3(b).