

**Dismissed and Opinion filed April 27, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-98-01345-CR**

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**MICHAEL LANCE WILLIAMS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 337<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 760,596**

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**OPINION**

Michael Lance Williams appeals from the trial court's denial of an evidentiary hearing on his motion for new trial, and denial of bail pending this appeal. In two points of error, appellant contends the trial court erred: (1) in denying bail because his sentence was eight years confinement and the State offered no evidence of flight risk or danger to the community, and (2) in denying an evidentiary hearing on his motion for new trial. We dismiss this appeal for want of jurisdiction.

On December 11, 1997, appellant pleaded no contest to sexual assault without an agreement as to punishment by the State. The trial court deferred adjudication of appellant's guilt, and placed him on community service for six years. Appellant did not file notice of appeal or motion for new trial from this

judgment. On October 30, 1998, more than ten months later, the trial court adjudicated his guilt for probation violations and sentenced him to eight years imprisonment. On November 9, 1998, appellant filed a general notice of appeal, without permission of the trial court. On November 30, 1998, appellant filed a motion for new trial alleging: (1) ineffective assistance of counsel in the original plea proceedings; (2) that his plea in the original proceedings was rendered involuntary by ineffective assistance of counsel; and (3) that the judgment entered in the original proceedings was contrary to the law and the evidence. On January 9, 1999, the trial court conducted a hearing on the motion for new trial and refused to hear evidence on any matters relating to the original plea proceedings. The State contended that appellant's motion for new trial from the original proceedings was not timely filed within thirty days from the date of that judgment (December 11, 1997). The State argued that the only appropriate legal remedy was post-conviction writ of habeas corpus as provided by article 11.07, Texas Rules of Criminal Procedure. Appellant argued that under *Flowers v. State*, the court of criminal appeals had provided that appellant can appeal the voluntariness of his plea after an adjudication of guilt in deferred adjudication cases. 935 S.W.2d 131 (Tex.Crim.App. 1996). The trial court stated that *Flowers* involved an appeal from a judgment entered in the *original* plea proceedings, whereas this case was an attempt to appeal from an adjudication of guilt in a *subsequent* adjudication proceeding. Appellant argued that he had a right to a direct appeal under *Flowers* to attack the original plea for involuntariness, and was not attacking his adjudication of guilt. The trial court denied appellant's motion for new trial, and refused to hear evidence on his allegations in that motion, and advised appellant that "this should be [an] 11.07 writ rather than a motion for new trial."

Thereafter, appellant was allowed to present evidence on his right to bail pending this appeal, and the trial judge reminded appellant that he had heard evidence at the "presentence investigation" at which appellant's new counsel was not present. The trial court told appellant's new counsel that he would hear appellant's evidence of eligibility for a bond pending an appeal, and would not prejudge appellant because of psychiatric testimony to the effect that appellant could be very dangerous if released. The trial court then heard testimony from appellant's mother, Ramona Lyons, to the effect that she could pay a bond premium in the sum of \$3,000.00 cash, and could "collateralize" a bond for \$30,000.00. Ms. Lyons stated that her mother, Ms. Meredith, could supervise appellant while he was on bail pending this appeal. After Ms.

Lyon's testified, appellant presented no further evidence on the bond eligibility. The State argued that testimony was presented at the adjudication hearing from appellant's psychiatrist indicating appellant was "a danger to society." Appellant did not object to the Prosecutor's argument. The trial court denied bail pending appellant's appeal.

Appellant's motion for new trial attacking the original plea proceedings was untimely filed, as found by the trial court and argued by the State. The record shows the motion for new trial was filed more than ten months after the original judgment of deferred adjudication probation was entered on December 11, 1997. In *Manuel v. State*, the court of criminal appeals held that a defendant placed on deferred adjudication community supervision may raise issues relating to the original plea proceeding only in appeals when deferred adjudication community supervision is first imposed. *Manuel v. State*, 994 S.W.2d 658, 661-662 (Tex.Crim.App.1999). See also *Hanson v. State*, 11 S.W.3d 285, 287-288 (Tex.App.–Houston[14th Dist.] 1999, no pet. h.); *Clark v. State*, 997 S.W.2d 365, 268 (Tex.App.–Dallas 1999, no pet. h.). Therefore, appellant's motion for new trial was untimely filed long after thirty days from the date of the judgment entered on December 11, 1997. Appellant's out-of-time motion for new trial was null and void, and the trial court had no jurisdiction to consider it. *Beathard v. State*, 767 S.W.2d 423, 432 (Tex.Crim.App.1989). The trial court did not err in refusing to hear evidence relating to appellant's attack on the original plea proceedings because the trial court had no jurisdiction over the untimely motion for new trial. See *Port v. State*, 798 S.W.2d 839, 847 (Tex.App.–Austin 1990, pet. ref'd).

To invoke the jurisdiction of this court, a defendant must file his notice of appeal within thirty days after the sentence is imposed in open court, or within ninety days after the sentence is imposed if a *timely* motion for a new trial has been filed. TEX. R. APP. P. 26.2; *Olivo v. State*, 918 S.W.2d 519, 523 (Tex.Crim.App.1996); *Rodarte v. State*, 860 S.W.2d 108, 110 (Tex.Crim.App.1993); *Stone v. State*, 931 S.W.2d 394, 395 (Tex.App.–Waco 1996, pet. ref'd). The time requirements for perfecting an appeal must be complied with to invoke our jurisdiction. *Id.* If the requirements are not met, we do not have jurisdiction to hear the appeal. *Id.* In this case, appellant filed a general notice of appeal, without the trial court's permission, on November 9, 1998, after he was adjudicated guilty. Appellant filed another notice of appeal on January 11, 1999, after the trial court overruled appellant's motion for new trial and request

for bail. In his second notice of appeal, he alleged want of jurisdiction “over this cause,” involuntariness of his plea, and ineffective assistance of counsel during the original proceedings. Because both notices of appeal were untimely, we do not have jurisdiction over this appeal as it relates to appellant’s point of error two contending the trial court erred in not hearing evidence on his grounds for new trial. *Id.* We dismiss appellant’s point of error two for want of jurisdiction.

In his brief, under point one, appellant contends the trial court erred in denying bail pending this appeal. In appellant’s second notice of appeal, he combined his appeal for review of the denial of an evidentiary hearing, and also appealed the trial court’s denial of bail pending this appeal. However, after appellant filed his initial brief in this Court, he retained new counsel on this appeal who filed a supplemental brief which was accepted by this Court. In his supplemental brief, appellant argues only his original point two over which we have no jurisdiction. Appellant’s supplemental brief is silent with respect to his point of error one concerning the trial court’s denial of bail pending this appeal. The State has filed a supplementary brief also and a supplementary clerk’s record indicating that the trial court reconsidered the bail bond issue and set his bond at \$100,000.00 on January 20, 2000. It is unknown if appellant has made this bond at this time.

The only issue raised by appellant in his original brief, which was not amended or supplemented, was that the trial court erred in denying bond. Because the trial court has since set bond, this point is moot because there is no longer any controversy concerning the trial court’s initial denial of bail. Accordingly, we must dismiss point of error two for lack of jurisdiction. *See Chacon v. State*, 745 S.W.2d 377, 378 (Tex.Crim.App. 1988) (when there is no controversy to decide on appeal, the court of criminal appeals must dismiss the appeal as moot).

For the reasons set out in this opinion, we dismiss this appeal for want of jurisdiction.

/s/ Bill Cannon  
Justice

Judgment rendered and Opinion filed April 27, 2000.

Panel consists of Justices Robertson, Sears, and Cannon.<sup>1</sup>

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

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<sup>1</sup> Senior Justices Sam Robertson, Ross A. Sears, and Bill Cannon sitting by assignment.