**Dismissed and Opinion filed August 23, 2001.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-00-00649-CR**

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**DANIEL JASON LORENCE, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 208th District Court**
**Harris County, Texas**
**Trial Court Cause No. 805,087**

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## O P I N I O N

Appellant, Daniel Jason Lorence, appeals from a conviction and sentence for possession of cocaine. We dismiss his appeal for lack of jurisdiction.

### I. PROCEDURAL History

On February 10, 1999, appellant was charged by information with the felony offense of possession of a controlled substance, namely cocaine weighing less than one gram, in violation of Texas Health and Safety Code section 481.115. On February 12, 1999, appellant signed a waiver of indictment, plea admonishments, a plea of guilty, and a waiver of constitutional rights. In accordance with the plea agreement, the State agreed

to prosecute appellant pursuant to section 12.44(a) of the Texas Penal Code and recommended 120 days' confinement in the Harris County Jail. For reasons not apparent from the record, appellant withdrew his plea of guilty on February 14, 1999, before the trial court took any action on it.

On April 29, 1999, the State entered an indictment against appellant again alleging an offense based on possession of a controlled substance, specifically cocaine weighing less than one gram. Appellant again entered a plea of guilty and signed a waiver of rights, an agreement to stipulate, and a judicial confession. The admonishments provided that appellant, if found guilty, could be convicted of a state jail felony and sentenced to confinement in a state jail for not less than 180 days or more than two years. On May 24, 1999, pursuant to a plea bargain with the State, appellant received three years' deferred adjudication, an $800 fine, and 200 hours of community service. Less than a year later, the State filed a motion to adjudicate appellant's guilt for violating the terms and conditions of his community supervision.[1] The State presented evidence that appellant violated his supervision by stealing a DVD player from a K-Mart store and by failing to fulfill his community service requirement. The trial court entered a judgment adjudicating appellant's guilt and sentenced him to one year confinement in a state jail.

Appellant now challenges his conviction and sentence raising two points of error: (1) the trial court failed to sentence him within the punishment range of section 12.44 of the Texas Penal Code and in accordance with the terms of his plea bargain; and (2) the trial court violated his rights not to be placed in jeopardy twice for the same offense as prohibited under Article I, Section 14 of the Texas Constitution.

## II. JURISDICTION

[1] A condition of appellant's community supervision prohibited him from committing any new crimes against this or any other state.

We do not reach the merits of appellant's points of error because we lack jurisdiction to decide this appeal.

Because appellant pled guilty pursuant to a plea agreement, appellant's notice of appeal must comply with Texas Rule of Appellate Procedure 25.2 to properly invoke appellate jurisdiction. *See* TEX. R. APP. P. 25.2(b)(3). If appellant's notice does not meet Rule 25.2's requirements, we must dismiss his appeal for lack of jurisdiction. *See Sherman v. State*, 12 S.W.3d 489, 491 (Tex. App.–Dallas 1999, no pet.).

Rule 25.2 requires , *inter alia*, that the notice of appeal (1) specify that the appeal was 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 judge granted permission to appeal. TEX. R. APP. P. 25.2(b)(3); *Betz v. State*, 36 S.W.3d 227, 228 (Tex. App.–Houston [14th Dist.] 2001, no pet. h.). "The rule does not mean, however, that our jurisdiction is properly invoked by the filing of a specific notice of appeal *complying only in form* with the extra-notice requirements of the rule." *Sherman*, 12 S.W.3d at 492 (emphasis added); *see Betz*, 36 S.W.3d at 228 ("Noncompliance, either in form or in substance, will result in a failure to properly invoke this Court's jurisdiction over an appeal to which Rule 25.2(b)(3) applies."). Instead, appellant must comply, in good faith, with the form and substance requirements of Rule 25.2(b)(3), and the record must substantiate the specific allegations in the notice of appeal. *Betz*, 36 S.W.3d at 228. Mere allegations are not sufficient to invoke appellate jurisdiction. *Sherman*, 12 S.W.3d at 491.

In *Betz,* we found that although the form of the notice of appeal complied with Rule 25.2(b)(3), the substance of that notice did not. *Betz*, 36 S.W.3d at 229. That notice of appeal provided "(1) the appeal is for jurisdictional defects, (2) the substance of the appeal was raised by written motion and ruled on before trial, or (3) the trial court granted permission to appeal. Such issues include, but are not limited to defendant's motion to suppress." *Id.* at 228. In *Betz*, while the language met the form requirements of Rule 25.2(b)(3), the record failed to substantiate those recitations because appellant made no

assertion that the trial court lacked jurisdiction, and the record did not reveal a written motion to suppress. *Id.* Moreover, although the trial court's docket sheet indicated defendant gave notice of appeal, it was insufficient to constitute a grant of permission to appeal by the trial court. *Id.* Thus, in *Betz* we held that the notice of appeal did not comply in substance with Rule 25.2(b)(2); therefore, it failed to invoke this court's jurisdiction, and we dismissed the appeal. *Id.* at 229.

In *Flores*, appellant's notice of appeal stated "These matters were raised by written motion by the defendant, Paulino Flores, and were ruled upon before the court." *Flores v. State*, 43 S.W.3d 628, 629 (Tex. App.–Houston [1st Dist.] 2001, no pet. h.). The court found that the record showed only a written motion filed by appellant to substitute counsel, which the trial court granted. *Id.* Thus, appellant's notice of appeal did not comply in substance with the requirements of Rule 25.2(b)(3), and the court dismissed the appeal for lack of jurisdiction. *Id.*

In this case, appellant's notice of appeal provides "It is likely that a challenge to the court's jurisdiction will be made." The exact language of Rule 25.2(b)(3) provides that the appellant must specify a jurisdictional defect. TEX. R. APP. P. 25.2(b)(3). It is unclear whether appellant has complied with the form requirement of Rule 25.2(b)(3) by stating merely that a jurisdictional challenge is "likely." *See id.* However, even assuming the *form* of this notice complies with Rule 25.2(b)(3), we nevertheless find the substance in appellant's notice of appeal deficient because nothing in the record indicates appellant challenged the trial court's jurisdiction in the court below. In other words, the record does not substantiate the lack of jurisdiction appellant intimates in his notice of appeal.

Because the notice of appeal fails to satisfy both the substance and form requirements of Rule 25.2(b)(3), our jurisdiction has not been invoked. Accordingly, we

dismiss this appeal for lack of jurisdiction.[2]

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed August 23, 2001.

Panel consists of Justices Edelman, Frost, and Murphy.[3]

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

[2] Our dismissal for lack of jurisdiction renders consideration of appellant's points of error unnecessary.

[3] Senior Chief Justice Paul C. Murphy sitting by assignment.