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Case Name: [Patricia Elizabeth Harkcom v. The State of Texas](#)

- OFFENSE: Possession of Controlled Substance / >1gr Cocaine
- COUNTY: Hood
- C/A CASE No. 02-12-00576-CR
- DATE OF OPINION: October 2, 2014
- DISPOSITION: Appeal Dismissed OPINION: [Livingston, CJ.](#)
- TRIAL COURT: 355th D/C; Hon. Ralph Walton
- LAWYERS: [Richard Mitchell](#) (Defense); [Robert Christian](#) (State)

(Background Facts) After the trial court sentenced Appellant on October 2, on the same day, it certified her right to appeal. Appellant and her trial counsel signed the certification, which recited that Appellant had been informed of her rights concerning an appeal. The trial court signed and filed its judgment of conviction on October 31, 2012. That day, Appellant, acting pro se, filed an application for appointment of counsel and a declaration of her inability to employ counsel. The application stated, “I have been advised of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me.” [Emphasis added.] The application did not express Appellant’s desire to appeal. The trial court granted the application and appointed counsel. On its order, the judge handwrote “ON APPEAL” to the end of typed words stating “ORDER APPOINTING COUNSEL.”

 [514.022 Perfecting Appeal / Notice of Appeal / Sufficiency of the Notice of Appeal](#): On November 8, 2012, Appellant, through newly-appointed counsel, filed several documents, including designations of matters for inclusion in the appellate record, a notice of appeal, and a combined motion for new trial and motion in arrest of judgment. The notice of appeal stated that Appellant had already sought an appeal through her request for counsel. The motion for new trial/motion in arrest of judgment, which was untimely filed, alleged that the jury’s verdict was contrary to the law and the evidence, that a new trial was warranted in the interests of justice, and that Appellant had not received effective assistance from her trial counsel. The trial court set a December 2012 hearing on Appellant’s combined posttrial motions. At the hearing, Appellant focused her presentation of evidence on alleged ineffectiveness of her trial counsel. Specifically, she appeared to contend that her trial counsel, who was still representing her on other charges, was ineffective for not calling two witnesses and for failing to attempt to negotiate a favorable plea agreement. The trial court denied the combined motions on December 3, 2012.

**Holding:** When a defendant has not filed a timely motion for new trial, the defendant must file a notice of appeal within thirty days after the day the trial court imposed its sentence in open court. \*\*\* Thus, because the trial court sentenced Appellant on October 2, 2012 and she did not timely

file a motion for new trial, her notice of appeal was due by November 1, 2012. \*\*\* The only document that Appellant filed between her date of sentencing and November 1, 2012 was her application for appointment of counsel. And although Appellant filed a notice of appeal in the trial court within fifteen days after the November 1, 2012 deadline, she did not, as required by rule of appellate procedure 26.3, file a motion for extension of time in this court during that same time period. \*\*\* We recognize that a notice of appeal is sufficient when it shows a defendant's desire to appeal. \*\*\* But Appellant's application for counsel did not necessarily show her desire to appeal; instead, it showed only her desire for the appointment of counsel, from which an appeal, a successful or unsuccessful motion for new trial, a successful or unsuccessful motion in arrest of judgment, or perhaps nothing (after consultation with counsel and counsel's review of the trial court's proceedings) may follow. Contrary to Appellant's contention in oral argument, there may be reasons for requesting appointment of counsel after sentence has been pronounced other than immediately bringing an appeal. \*\*\* [We] cannot conclude that Appellant's application for appointment of counsel qualifies as a timely notice of appeal.

**Concurring / Dissenting Opinions:** [Justice Walker](#) delivered a dissenting opinion. She would find that the application for appointment of counsel demonstrated "the defendant's desire to appeal."