

Opinion filed September 15, 2016



In The

# **Eleventh Court of Appeals**

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**No. 11-15-00314-CR**

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**IVAN GARAY LOPEZ, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 35th District Court  
Brown County, Texas  
Trial Court Cause No. CR21461**

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## **MEMORANDUM OPINION**

On August 25, 2016, this court abated this appeal and remanded the cause to the trial court for a hearing on Appellant’s motion for new trial. The trial court held a hearing on the motion for new trial and granted it in part. We dismiss this appeal without prejudice.

On September 14, 2016, the trial court signed an order in which it granted a new trial in trial court cause no. CR21461 “as to punishment only.” “Granting a new trial on punishment restores the case to its position after the defendant was found

guilty.” TEX. R. APP. P. 21.9(c). Thus, Appellant has been returned to the position in which he stood immediately following the finding of guilty, and a new trial on punishment will proceed as if the original punishment hearing had never occurred. Consequently, no final, appealable judgment remains over which this court currently has jurisdiction. *Jackson v. State*, No. 05-09-00487-CR, 2010 WL 2598919, at \*3 (Tex. App.—Dallas June 30, 2010, no pet.) (not designated for publication); *Norris v. State*, No. 2-10-014-CR, 2010 WL 1854138 (Tex. App.—Fort Worth May 6, 2010, no pet.) (mem. op., not designated for publication). This dismissal does not in any way prejudice Appellant’s right to file a notice of appeal in this cause in the future.

We dismiss this appeal for want of jurisdiction.

PER CURIAM

September 15, 2016

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,  
Willson, J., and Bailey, J.