

STATE OF LOUISIANA

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NO. 2018-KA-0355

VERSUS

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COURT OF APPEAL

TEDDY R. MAGEE

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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JENKINS, J., DISSENTS WITH REASONS

I respectfully dissent. I find that the State’s motion for new trial was untimely and, accordingly, this appeal should be dismissed as untimely.

The judgments setting aside the bond forfeitures at issue in this appeal were rendered on April 25, 2011 and January 28, 2013; but the State did not file a motion for new trial in the trial court until August 9, 2017. In addressing the timeliness of this appeal, the majority finds that the motion for new trial was timely because “notice of each judgment as required by La. C.C.P. art. 1913 was never effectuated.” However, as reasoned by this Court in *State v. Financial Casualty and Surety, Inc.*, 17-1014, 18-0242 (La. App. 4 Cir. 11/7/18), -- So.3d --, 2018 WL 5830381, under nearly indistinguishable facts, I find that no notice of judgments was required to be effectuated under La. C.C.P. art. 1913.

In this case, the record of each hearing to set aside the bond forfeiture reflects that the State was present at the hearing, raised no opposition to the setting aside of the bond forfeiture, and was fully aware of the trial court’s judgment. I also note that both signed judgments state “READ, RENDERED AND SIGNED in open Court.” Thus, the record indicates that the State acquiesced in the judgments setting aside the bond forfeitures and received notice of judgment in open court on the date that each judgment was rendered and signed. Under these facts, I find that

La. C.C.P. art. 1913 is inapplicable; and when no notice is required, the delay for applying for a new trial commences on the day after the judgment is signed. *See* Frank L. Maraist, 1 La. Civ. L. Treatise, Civil Procedure § 14.6 (2d ed., 2018).

Based on the record of proceedings, and in light of this Court's recent decision in *Financial Casualty and Surety, supra*, I find the State's appeal of the judgments setting aside the bond forfeitures untimely.