

**Appeal Reinstated, Appeal Dismissed, and Memorandum Opinion filed April 3, 2018.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-17-00776-CR**

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**CEDRIC RAMON MCGILL JR., Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 1st District Court  
Jasper County, Texas  
Trial Court Cause No. 12823JD**

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**M E M O R A N D U M    O P I N I O N**

Appellant was adjudicated guilty of evading arrest or detention. On August 23, 2017, the trial court sentenced him to one year's confinement in county jail. Appellant timely appealed. While the appeal was pending, the trial court permitted his appointed lawyer to withdraw and offered to appoint new counsel. Appellant declined and stated he wanted to represent himself. The trial court permitted him to do so.

After appellant failed to file a brief, we abated this appeal on January 29, 2018, and ordered the trial court to hold a hearing to determine if appellant wanted to continue his

appeal and, if so, if he desired and was entitled to appointed counsel. At our direction, the trial court made findings of fact and conclusions of law following the hearing and had them, as well as a transcript of the hearing, filed as supplemental records in this court.

The hearing was held on February 27, 2018, at which time the trial court appointed Michael Ratcliff to represent appellant. According to the findings and the transcript, the State and appellant reached an agreement that appellant would be released from jail that day, roughly nine and a half months into his sentence, on “time served.” In light of their agreement, appellant no longer wished to prosecute his appeal. Appellant and his lawyer engaged in the following exchange on the record:

MR. RATCLIFF: Now, Mr. McGill, an offer has been made through the District Attorney’s Office that towards this one year sentence that it may be reduced to time served as of today. You do understand that, don’t you?

THE DEFENDANT: Yes, sir.

MR. RATCLIFF: Meaning that this one year sentence was reduced down to the nine and a half months that you have already served time in jail and that you in all likelihood could go home. Do you understand that.

THE DEFENDANT: Yes, sir.

MR. RATCLIFF: Keeping all that in mind, do you wish to withdraw your appeal with the Court of Appeals and be given credit for time served and go home.

THE DEFENDANT: Yes, sir.

MR. RATCLIFF: Is that what you’re asking the Court to do today.

THE DEFENDANT: Yes, sir.

MR. RATCLIFF: You understand that you have your right to appeal this process and the conviction that was held against you, but you could withdraw that appeal and say that I no longer want to pursue that appeal, I’m satisfied with --

THE DEFENDANT: I am.

MR. RATCLIFF: -- time served. Is that what you want to do?

THE DEFENDANT: Yes, sir.

MR. RATCLIFF: You need to speak up loud so the court reporter can hear you. Do you have any questions you want to ask concerning me or the Court of Appeals concerning this matter?

THE DEFENDANT: No, sir.

MR. RATCLIFF: Are you instructing the Court and also me to notify the Court of Appeals that you're withdrawing your appeal process and are satisfied?

THE DEFENDANT: Yes, sir.

The trial court confirmed appellant's wish to withdraw his appeal:

THE COURT: Okay. Mr. McGill, you understand the testimony that you've given and also for your attorney Mr. Ratcliff in this matter; and just for clarification, I want you to understand the issue here is regarding whether you want to pursue your appeal or not. You're telling the Court "no;" is that correct?

THE DEFENDANT: Yes, sir.

At counsel's request, the trial court signed an amended order adjudicating guilt sentencing appellant to "283 DAYS JASPER COUNTY JAIL (TIME SERVED)."<sup>1</sup>

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<sup>1</sup> The amended judgment appears to be of no effect because it was signed more than 30 days after the original judgment adjudicating guilt was signed, which is when a trial court's plenary power expires if no timely post-judgment motion is filed. Tex. R. App. P. 21.4(a), 22.3; *In re State ex rel. Sistrunk*, 142 S.W.3d 497, 503–04 (Tex. App.—Houston [14th Dist.] 2004, orig. proceeding); *Wright v. State*, No. 03-10-00367-CR, 2012 WL 1948341, at \*3–4 (Tex. App.—Austin May 22, 2012, no pet.). If the amended judgment merely corrected a clerical error, it would be considered a judgment nunc pro tunc, which may be signed after the court loses plenary power. *State v. Bates*, 889 S.W.2d 306, 309 (Tex. Crim. App. 1994). Here, the amended judgment does not correct a clerical error—it imposes a new sentence based on the parties' agreement. We do not believe the invalidity of the amended judgment is a bar to dismissal in this case, however. Appellant confirmed his desire to withdraw his appeal before the amended judgment was signed.

Appellant has not filed a written motion to withdraw the appeal or a written motion to dismiss the appeal. *See* Tex. R. App. P. 42.2(a). However, based upon the testimony at the hearing that appellant does not want to continue his appeal, we conclude that good cause exists to suspend the operation of Rule 42.2(a) in this case. *See* Tex. R. App. P. 2.

Accordingly, we reinstate and dismiss the appeal.

PER CURIAM

Panel consists of Justices Boyce, Donovan, and Wise.  
Do Not Publish — Tex. R. App. P. 47.2(b).