



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00062-CR

Victor **MAGALLANES**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 25th Judicial District Court, Guadalupe County, Texas
Trial Court No. 13-1178-CR-A
Honorable Doug Shaver, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Irene Rios, Justice

Delivered and Filed: July 18, 2018

DISMISSED FOR LACK OF JURISDICTION

On January 31, 2013, the Texas Court of Criminal Appeals granted appellant an out-of-time appeal. On February 1, 2018, appellant filed a notice of appeal. On May 29, 2018, the trial court clerk filed a supplemental clerk's record which contained appellant's motion for new trial and the trial court's May 22, 2018 order granting appellant's motion for new trial as to punishment only. Therefore, it appeared that there is no sentence to be appealed in this case, and we ordered appellant to show cause in writing on or before June 18, 2018 why this appeal should not be dismissed for lack of jurisdiction. Appellant has not filed a response.

When the trial court grants a motion for new trial, the case is restored to its position before the former trial. TEX. R. APP. P. 21.9(b). Because there is no sentence to be appealed, we have no jurisdiction over the appeal. *See Waller v. State*, 931 S.W.2d 640, 643-44 (Tex. App.—Dallas 1996, no pet.). Accordingly, we dismiss the appeal for want of jurisdiction.

PER CURIAM

DO NOT PUBLISH