

NO. 07-04-0576-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
MARCH 2, 2005

RACHEL DIAZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE 320TH DISTRICT COURT OF POTTER COUNTY;
NO. 49,392-D; HONORABLE DON R. EMERSON, JUDGE

Before JOHNSON, C.J., and QUINN and CAMPBELL, JJ.

MEMORANDUM OPINION

Appellant Rachel Diaz was convicted of aggravated robbery. Sentence was imposed on November 1, 2004. Appellant filed a timely motion for new trial on November 30, 2004, and a notice of appeal on December 10, 2004. See Tex. R. App. P. 21.4(a), 26.2(a). Appellant has filed a motion to dismiss the appeal asserting that the trial court granted her

motion for new trial on December 20, 2004. Attached to the motion to dismiss is a copy of the trial court's order granting the motion for new trial. The State did not file a response.

We cannot grant the motion to dismiss as one under Rule of Appellate Procedure 42.2(a) because it is not personally signed by appellant. We will, however, treat it as a motion to dismiss the appeal for want of jurisdiction.

When the trial court grants a motion for new trial, it restores the case to its position before the former trial. Tex. R. App. P. 21.9. Because there is no conviction to be appealed, we have no jurisdiction to consider appellant's 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.

James T. Campbell
Justice

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