

NO. 07-05-0435-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
NOVEMBER 9, 2006

THE STATE OF TEXAS,

Appellant

v.

ADNEY SADAKHOUNE,

Appellee

FROM THE 108TH DISTRICT COURT OF POTTER COUNTY;
NO. 49,107-E; HON. ABE LOPEZ, PRESIDING

Memorandum Opinion

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

The State of Texas appeals from an order granting Adney Sadakhouné a new trial. Through the three issues before us, it contends that the trial court abused its discretion in so ordering. We reverse the order for reasons other than those propounded by the State.

According to the record before us, the trial court adjudicated Sadakhouné's guilt and sentenced him in open court on October 6, 2005. He timely moved for a new trial, and the motion was heard on November 28, 2005. At the end of the hearing, the trial court agreed

to grant the motion. However, it did not sign a written order manifesting that decision until February 8, 2006.

Neither an oral order nor a docket entry is effective to grant a motion for new trial. See TEX. R. APP. P. 21.8(b); *State v. Garza*, 931 S.W.2d 560, 562 (Tex. Crim. App. 1996). Instead, a new trial may only be granted through the execution of a written order. *State v. Garza*, 931 S.W.2d at 562. Moreover, once a motion for new trial is overruled by operation of law, the trial court loses jurisdiction to act upon it. *Id.* Finally, a motion for new trial is overruled by operation of law if it is not granted by written order within 75 days after imposing or suspending sentence in open court. TEX. R. APP. P. 21.8(a).

Here, the record discloses that the trial court did not execute a written order granting Sadakhouné's motion for new trial until February 8, 2006. Yet, it was previously overruled by operation of law on December 20, 2005, for that date represents the 75th day from the time Sadakhouné was sentenced in open court. So, because the motion was previously overruled by operation of law, the trial court had no jurisdiction to grant it on February 8th, despite its oral pronouncement at the November hearing. *State v. Garza, supra.*

Consequently, the order granting new trial is void, and we reverse it.

Brian Quinn
Chief Justice

Do not publish.