

NO. 07-06-0344-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL A
SEPTEMBER 29, 2006

TIMOTHY DARON GRAVES, APPELLANT
V.
THE STATE OF TEXAS, APPELLEE

FROM THE 46TH DISTRICT COURT OF HARDEMAN COUNTY;
NO. 3961; HONORABLE TOM NEELY, JUDGE

Before REAVIS and CAMPBELL and HANCOCK, JJ.

MEMORANDUM OPINION

Appellant Timothy Daron Graves perfected this appeal to challenge his conviction for burglary of a habitation. Pending before this Court is a motion to dismiss filed pursuant to Rule 42.2 of the Texas Rules of Appellate Procedure by which appellant asserts the trial

court granted his motion for new trial. Attached to the motion is a copy of the trial court's order granting the motion for new trial.

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

The legal effect of granting a motion for new trial restores the case to its position before the former trial. Tex. R. App. P. 21.9. There being no conviction to be appealed, we have no jurisdiction to consider this appeal. See *Waller v. State*, 931 S.W.2d 640, 643-44 (Tex.App.–Dallas 1996, no pet.).

Accordingly, we dismiss this appeal for want of jurisdiction.

Don H. Reavis
Justice

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