

NO. 07-08-0156-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL D
JULY 9, 2008

JAMES ALLEN WALKER, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM CRIMINAL DISTRICT COURT NO. ONE OF TARRANT COUNTY;
NO. 1076378D; HONORABLE SHAREN WILSON, JUDGE

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

MEMORANDUM OPINION

Appellant, James Allen Walker, filed a notice of appeal challenging his conviction for burglary of a habitation, enhanced. On April 2, 2008, the trial court granted Appellant's Motion for New Trial. Pending before this Court is Appellant's Motion to Dismiss Appeal as Moot. We grant the motion.

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(b). Because there is no conviction from which to appeal, 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.).

Consequently, Appellant's Motion to Dismiss is granted and the appeal is dismissed. No motion for rehearing will be entertained and our mandate will issue forthwith.

Patrick A. Pirtle
Justice

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