

NO. 07-11-0112-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL A
MAY 11, 2011

KENNETH RAY MCCAIN, APPELLANT
V.
THE STATE OF TEXAS, APPELLEE

FROM COUNTY COURT AT LAW NO. 1 OF POTTER COUNTY;
NO. 127,946; HONORABLE W.F. "CORKY" ROBERTS, JUDGE

Before CAMPBELL and HANCOCK and PIRTLE, JJ.

ORDER GRANTING MOTION FOR REHEARING

By opinion dated March 29, 2011, this Court dismissed this appeal for want of jurisdiction due to the notice of appeal having been untimely filed.¹ On April 13, 2011, Appellant filed a *Motion for Rehearing* explaining that the trial court's judgment reflected an incorrect sentencing date. The motion was accompanied by a *Nunc Pro Tunc*

¹The trial court's judgment reflected that sentence was imposed on January 24, 2011, making the notice of appeal due on February 23, 2011. Tex. R. App. P. 26.2(a)(1). Applying the fifteen-day extension period of Rule 26.3 of the Texas Rules of Appellate Procedure advanced the deadline to March 10, 2011. Because the notice of appeal and a motion for extension of time were not filed until March 11, 2011, based upon that record, we had no choice but to dismiss the appeal for want of jurisdiction.

Judgment reflecting Appellant was sentenced on January 25, 2011, and not on January 24, 2011. This Court requested that the State file a response to Appellant's *Motion for Rehearing*. In its response, the State concurs with Appellant that he was sentenced on January 25, 2011. Calculating from the new sentencing date and applying the fifteen-day extension period of Rule 26.3 of the Texas Rules of Appellate Procedure, Appellant's notice of appeal was timely filed on March 11, 2011.

We grant Appellant's motion for rehearing, withdraw our opinion and judgment of March 29, 2011, and reinstate this appeal. Our disposition further requires that we grant Appellant's *Motion to Extend Time for Filing Notice of Appeal* which was filed on March 11, 2011, in order for Appellant to benefit from the fifteen-day extension period of Rule 26.3.² All briefing deadlines shall be in accordance with the applicable Rules of Appellate Procedure.

Patrick A. Pirtle
Justice

Do not publish.

²The Court accepts Appellant's counsel's reasonable explanation for the delay in filing the notice of appeal. See Tex. R. App. P. 10.5(b)(A).