

NO. 07-11-0248-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL A
OCTOBER 5, 2011

DIMAS MORENO, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE 137TH DISTRICT COURT OF LUBBOCK COUNTY;
NO. 2010-426,193; HONORABLE JOHN J. McCLENDON III, JUDGE

Before CAMPBELL and HANCOCK and PIRTLE, JJ.

ABATEMENT AND REMAND

Pursuant to a plea bargain, Appellant, Dimas Moreno, was convicted of possession with intent to deliver a controlled substance in an amount of four grams or more but less than 200 grams, in a drug free zone, and sentenced to fifteen years confinement.¹ On July 26, 2011, this Court dismissed this appeal for want of jurisdiction based on an untimely notice of appeal. The dismissal was based on information

¹See Tex. Health & Safety Code Ann. §§ 481.112(d) & 481.134(c) (West 2010).

contained in the judgment which reflected Appellant's sentencing date as April 21, 2011. The notice of appeal filed on June 22, 2011, appeared untimely. See Tex. R. App. P. 26.2(a)(1) and 26.3. Appellant filed a motion for rehearing supported by a copy of excerpts from the reporter's record demonstrating he was not sentenced until May 31, 2011, thereby making his notice of appeal timely. The motion for rehearing was granted and the appeal was reinstated by order dated August 23, 2011.

On September 26, 2011, the official court reporter's record was filed. The record clearly reflects that although Appellant entered his plea on April 21, 2011, the trial court deferred sentencing to allow him to take care of some family issues. The record also shows that Appellant was sentenced on May 31, 2011. Because the sentencing date contained in a judgment is the critical date for determining our jurisdiction, and because the reporter's record clearly reflects that the actual sentencing date was May 31, 2011, the judgment contained in the appellate record contains inaccurate information.

We now abate this appeal and remand the cause to the trial court for entry of a judgment *nunc pro tunc* reflecting a sentencing date of May 31, 2011. We direct the trial court clerk to forward the judgment *nunc pro tunc* to the Clerk of this Court in a supplemental record on or before October 21, 2011.

It is so ordered.

Per Curiam

Do not publish.