In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00191-CR

CORY GLENN COOKSEY, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 316th District Court
Hutchinson County, Texas
Trial Court No. 12269, Honorable James M. Mosley, Presiding

April 1, 2022

MEMORANDUM OPINION

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

Cory Glenn Cooksey appeals from his two convictions for indecency with a child by exposure. One issue pends for consideration. It concerns whether the trial court abused its discretion in denying him a hearing on his amended motion for new trial. We conclude that it did not.

"A new trial shall be granted an accused where material evidence favorable to the accused has been discovered since trial." TEX. CODE CRIM. PROC. ANN. art. 40.001. That is the basis upon which appellant sought one here. Furthermore, one is "entitled to a

hearing on [such a] motion for new trial if the motion and accompanying affidavit(s) 'raise matters not determinable from the record, upon which the accused could be entitled to relief.'" *Wallace v. State*, 106 S.W.3d 103, 108 (Tex. Crim. App. 2003) (en banc); *Beckett v. State*, No. 07-10-00297-CR, 2011 Tex. App. LEXIS 4353, at *3 (Tex. App.—Amarillo June 8, 2011, pet. ref'd) (mem. op., not designated for publication) (quoting *Wallace*, 106 S.W.3d at 108). And though the accompanying affidavits need not establish a prima facie case for a new trial, they nevertheless must reflect that reasonable grounds exist for holding that such relief may issue. *Id.*

Here, no affidavit accompanied appellant's motion for new trial. Such was "an absolute prerequisite to obtaining a hearing." *Martinez v. State*, No. 01-06-00976-CR, 2008 Tex. App. LEXIS 28, at *7 (Tex. App.—Houston [1st Dist.] Jan. 3, 2008, pet. ref'd) (mem. op., not designated for publication). And, in lieu thereof, appellant's counsel signed a verification wherein he represented that he "read the Motion for New Trial and ***upon information and belief*** every statement is true and correct ***to the best of my knowledge***." (Emphasis added). Assuming *arguendo* that a verification based upon "information and belief" converted the motion itself into some form of an affidavit, we further note the absence of facts in the document that support the purported grounds for relief. That is, appellant simply averred that additional evidence surfaced, which evidence (1) tended "to support defendant's innocence," (2) includes both "tangible documentary evidence" and "live witnesses not available at trial," and (3) "could have resulted in a different outcome." Such conclusory representations lacking factual support do and did not obligate the trial court to afford appellant a hearing. *See Smith v. State*, 286 S.W.3d 333, 339 (Tex. Crim. App. 2009) (stating that "affidavits [which] are conclusory in nature

and unsupported by facts do not provide the requisite notice of the basis for the relief claimed; thus, no hearing is required”).

Accordingly, we overrule appellant’s sole issue and affirm the trial court’s judgments of conviction.

Per Curiam

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