



**IN THE
TENTH COURT OF APPEALS**

No. 10-12-00368-CR

BOBBY RAY SNELL, JR.,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 19th District Court
McLennan County, Texas
Trial Court No. 2011-2478-C1**

MEMORANDUM OPINION

Appellant Bobby Ray Snell, Jr., entered an open plea of guilty to the second-degree-felony offense of possession of a controlled substance (codeine). The trial court assessed Snell's punishment, enhanced by a prior felony conviction, at twenty-five years' confinement. Snell appealed. In one issue, Snell contends that although his punishment range was enhanced from that of a second-degree felony to that of a first-degree felony, the degree of the offense was not enhanced; therefore, the judgment should be modified accordingly.

After Snell filed his brief, the trial court signed a judgment *nunc pro tunc*, modifying the “Degree of Offense” from “1ST DEGREE FELONY” to “2ND DEGREE FELONY.” The State then filed a letter brief, stating that the judgment *nunc pro tunc* mooted Snell’s only issue and that, even if the issue were not moot, the State would concede error.

Appellate courts are prohibited from deciding moot controversies. *See Ex parte Flores*, 130 S.W.3d 100, 104-05 (Tex. App.—El Paso 2003, no pet.). A case becomes moot on appeal when the judgment of the appellate court can no longer have an effect on an existing controversy or cannot affect the rights of the parties. *Jack v. State*, 149 S.W.3d 119, 123 n.10 (Tex. Crim. App. 2004). We agree with the State that the judgment *nunc pro tunc* mooted Snell’s only issue.

By letter dated February 27, 2013, the Clerk of this Court notified Snell that this appeal was subject to dismissal because the trial court’s *nunc pro tunc* judgment mooted his sole issue on appeal. The Clerk also warned Snell that the Court may dismiss the appeal unless, within twenty-one days of the date of the letter, a response was filed showing grounds for continuing the appeal. No response has been received from Snell. Accordingly, his appeal is dismissed.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Appeal dismissed
Opinion delivered and filed April 11, 2013
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[CRPM]