



**IN THE
TENTH COURT OF APPEALS**

No. 10-18-00065-CR

WALTER MAX ROX,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 272nd District Court
Brazos County, Texas
Trial Court No. 05-03955-CRF-272**

MEMORANDUM OPINION

Walter Max Rox appeals the trial court's revocation of his community supervision. In his sole issue, Rox contends that the trial court erred in allowing his motion for new trial to be overruled by operation of law without a hearing. Rox argues that he was

entitled to a hearing on his motion because the motion alleged ineffective assistance of counsel. We will affirm the trial court's judgment as modified.¹

A trial court should hold a hearing on a motion for new trial when the motion raises matters that are not determinable from the record and that could entitle the accused to relief. *Rozell v. State*, 176 S.W.3d 228, 230 (Tex. Crim. App. 2005). But the trial court need not conduct a hearing if the defendant does not present the motion to the trial court within ten days of filing. See TEX. R. APP. P. 21.6; *Arrellano v. State*, 555 S.W.3d 647, 655 (Tex. App.—Houston [1st Dist.] 2018, pet. ref'd). "Presentment requires a defendant to do more than simply file the motion for new trial with the trial court clerk. 'The presentment must be directed to the trial court or another authorized to act on behalf of the trial court.'" *Bearnth v. State*, 361 S.W.3d 135, 145 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd) (quoting *Carranza v. State*, 960 S.W.2d 76, 79 (Tex. Crim. App. 1998)). "This requirement puts 'the trial court on actual notice that a defendant desires the trial court to take some action on the motion for new trial such as a ruling or a hearing on it.'" *Id.* (quoting *Stokes v. State*, 277 S.W.3d 20, 21 (Tex. Crim. App. 2009) (quoting *Carranza*, 960 S.W.2d at 78)). Proof of presentment must be apparent from the record and can be

¹ The judgment in this case reflects that Rox pleaded "not true" to the motion to revoke his community supervision. The record, however, reflects that Rox pleaded "true" to all the allegations in the State's amended motion to revoke his community supervision. We therefore modify the trial court's judgment to reflect that Rox pleaded "true" to all the allegations in the State's amended motion to revoke. See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993) (concluding that appellate court has authority to reform judgment to make record speak truth when matter has been called to its attention by any source).

evidenced by the trial judge's signature or notation on the proposed order attached to the motion for new trial, an entry on the docket sheet indicating presentment, or the setting of a hearing date. *Id.* at 146.

Here, Rox timely filed his motion for new trial alleging ineffective assistance of counsel. The motion contained a prayer requesting that "this Honorable Court set this Motion for New Trial for a hearing, and after said hearing, that this motion be granted and the Defendant be given a new trial in this case." The motion also contained a "Certificate of Presentment" that stated: "By signature above, I hereby certify that a true and correct copy of the above and foregoing has been served by eFile to the Office for the 272nd Judicial District Court of Brazos County, on day of filing this motion." But the record does not contain a proposed order on Rox's motion for new trial, and the motion for new trial was overruled by operation of law. *See* TEX. R. APP. P. 21.8(a), (c). Furthermore, the docket sheet does not indicate presentment, and there is no evidence of a hearing date on Rox's motion for new trial.

This record does not demonstrate that the trial court had actual notice of Rox's desire for a hearing on his motion for new trial. Accordingly, we cannot hold that Rox's motion for new trial was timely presented. *See Arrellano*, 555 S.W.3d at 655-56; *Bearnth*, 361 S.W.3d at 145-46. Instead, Rox has failed to preserve any complaint about the trial court allowing his motion for new trial to be denied by operation of law without a

hearing. See TEX. R. APP. P. 33.1(a); *Perez v. State*, 429 S.W.3d 639, 643-44 (Tex. Crim. App. 2014); *Arrellano*, 555 S.W.3d at 655-56.

We overrule Rox's sole issue and affirm the trial court's judgment as modified.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill

Affirmed as modified

Opinion delivered and filed August 31, 2020

Do not publish

[CR25]

