

**Order Granting Motion for New Trial Vacated, Appeals Dismissed and Opinion  
filed March 29, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NOS. 14-00-01197-CR & 14-00-01198-CR**  
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**THE STATE OF TEXAS, Appellant**

**V.**

**JAMES CLIVE BELCHER, Appellee**

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**On Appeal from the 56th District Court  
Galveston County, Texas  
Trial Court Cause Nos. 99CR0496 & 99CR0497**

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**OPINION**

This is a State's appeal from the trial court's order granting the defendant's motion for new trial. *See* TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(3) (Vernon Supp. 2000). On appeal, the State contends the trial court erred in granting the motion for new trial because its plenary power had expired. We vacate the order granting the motion for new trial.

On April 28, 2000, a jury found James Clive Belcher guilty of the offenses of aggravated kidnapping and aggravated robbery. On May 17, 2000, the trial court entered a judgment on the verdict and sentenced appellant to thirty years in the Texas Department of

Criminal Justice--Institutional Division. On May 24, 2000, Belcher filed a motion for new trial, and then, on June 16, 2000, an amended motion for new trial.

On August 1, 2000, the trial court granted Belcher's motion for new trial based on the improper seating of a juror and the absence of Belcher for participation in the exercise of peremptory challenges. On August 15, 2000, the State filed a notice of appeal challenging the order granting the motion for new trial.

In a single point, the State contends the trial court erred in granting the motion for new trial because the order granting the motion for new trial was signed on the seventy-sixth day after sentence was imposed in open court. The State argues that rule 21.8 requires the trial court to rule on a motion for new trial within seventy-five days after imposing or suspending sentence in open court, and that any motion not ruled on is deemed denied on the seventy-fifth day. *See* TEX. R. APP. P. 21.8. We agree.

A motion for new trial is overruled by operation of law if a written order is not entered by the seventy-fifth day after the trial court imposes sentence in open court. TEX. R. APP. P. 21.8(a), (c); *State ex rel Cobb v. Godfrey*, 739 S.W.2d 47, 49 (Tex. Crim. App. 1987).<sup>1</sup> Where the time in which to rule upon a motion for new trial has expired and the defendant's motion for new trial has been overruled by operation of law, the trial court lacks authority to subsequently grant a new trial. *Godfrey*, 739 S.W.2d at 49. Any action on the motion by the trial court after this time expires is a nullity. *Id.* When the time in which to rule on a defendant's motion has expired, any subsequent action on the motion must be characterized as granting the new trial *sua sponte*. *Id.* No authority exists for the trial court to grant a new trial on its own motion. *Id.*

In the instant case, the record shows sentence was imposed on May 17, 2000. Thus, the

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<sup>1</sup> If, however, the seventy-fifth day is a Saturday, Sunday, or legal holiday, the period is extended to the end of the next day that is not a Saturday, Sunday, or legal holiday. TEX. R. APP. P. 4.1(a); *see Laidley v. State*, 966 S.W.2d 105, 107-08 (Tex. App.--Houston [1st Dist.] 1998, pet. ref'd) (where seventy-fifth day after imposition of sentence fell on Sunday, motion for new trial was overruled by operation of law at end of following day). Here, the seventy-fifth day fell on Monday, which was not a holiday.

trial court had seventy-five days from that date to rule on the motion for new trial. Computing this time under rule 4.1 of the Rules of Appellate Procedure, the seventy-fifth day fell on July 31, 2000. *See* TEX. R. APP. P. 4.1 (stating that day of act, event or default after which a designated period begins to run is not included when computing a period prescribed or allowed by these rules, by court order, or by statute, but the last day of the period is included). The trial court's order granting the motion for new trial was signed on August 1, 2000, the *seventy-sixth* day after sentence was imposed. Thus, the trial court was without authority to grant the motion for new trial on August 1, 2000; the motion had been denied by operation of law on July 31, 2000. *See* TEX. R. APP. P. 21.8(c); *Godfrey*, 739 S.W.2d at 49.

Because the written order granting the motion for new trial was not timely signed, we conclude Belcher's motion for new trial was overruled by operation of law. We hold the trial court lacked authority to grant the motion for new trial after it was overruled by operation of law. We further hold the trial court's order granting appellee's motion for new trial is a nullity. *See Godfrey*, 739 S.W.2d at 49.

Accordingly, we vacate the trial court's order signed August 1, 2000, granting appellee's motion for new trial, and order the appeals dismissed.

PER CURIAM

Judgment rendered and Opinion filed March 29, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore

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