

Affirmed and Opinion filed May 10, 2001.



In The

Fourteenth Court of Appeals

NO. 14-98-01455-CR

ERIC ALEXANDER SPRINGSTUN, Appellant

V.

THE STATE OF TEXAS , Appellee

**On Appeal from the County Court at Law No. 11
Harris County, Texas
Trial Court Cause No. 98-21636**

OPINION

A jury convicted Eric Alexander Springstun of assault. He pleaded true to an enhancement paragraph and was sentenced by the trial court to ninety days in the Harris County Jail. In one point of error appellant contends the trial court erred in not granting him leave to file an amended motion for new trial after his original motion for new trial was overruled. We affirm.

Although he was represented by counsel at trial, appellant chose to represent himself

in filing a motion for new trial. The trial court held a hearing on that motion and overruled it. An attorney then took up appellant's cause and sought leave from the trial court to amend the motion for new trial to allege attorney abandonment and jury misconduct. The trial court denied leave, prompting this appeal.

We agree with the State that the trial court had no discretion to grant leave to amend an overruled motion for new trial. *See Starks v. State*, 995 S.W.2d 844 (Tex. App.—Amarillo 1999, no pet.).

In *Starks*, the trial court overruled appellant's motion for new trial; when presented with a motion to amend ten days later, the court found it had lost jurisdiction over the case under rule 21.4 of the Rules of Appellate Procedure. *Id.* at 844. The Amarillo Court of Appeals agreed. *See Ex parte Drewery*, 677 S.W.2d 533 (Tex. Crim. App. 1984), *overruled on other grounds by Awadalkariem v. State*, 974 S.W.2d 721, 728 (Tex. Crim. App. 1998) and *Hanner v. State*, 572 S.W.2d 702 (Tex. Crim. App. 1978)(en banc) controlled, despite a change in the law. In *Drewery*, the State sought to assert *Hanner* as authority for its argument that a notice of appeal divests the trial court of authority to hear a motion for new trial. The *Drewery* court held otherwise: "*Hanner, supra*, does not stand for the principle that once notice of appeal is filed the trial court cannot rule upon a motion for new trial. It does stand for the proposition that one cannot amend a motion that has been previously overruled." *Drewery*, 677 S.W.2d at 536.

The *Drewery* court went on to cite the language in the Code of Criminal Procedure at that time, language now found in TEX. R. APP. P. 21.4(b), that a motion for new trial may be amended without leave of court at anytime prior to the overruling of said motion. It declined to find that this language implied that the the trial court had authority to grant leave after the motion had been overruled. The *Starks* court found this interpretation on point and controlling. *Starks*, 995 S.W.2d at 845. Finding *Starks* persuasive, we find that the trial court could not have permitted amendment of appellant's motion for new trial it was overruled. We

overrule appellant's sole point of error and affirm the judgment of the trial court.

/s/ Eric Andell
Justice

Judgment rendered and Opinion filed May 10, 2001.

Panel consists of Justices Lee, Amidei, and Andell.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justice Norman Lee and Former Justices Maurice Amidei and Eric Andell sitting by assignment.