Affirmed and Opinion filed August 31, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00810-CR

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LINDA MENDEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 808,549

O P I N I O N

Linda Mendez appeals her conviction by the trial court for the offense of robbery. In accordance with a plea bargain, appellant entered a plea of guilty to the offense and pleas of true to the allegations in two enhancement paragraphs. The trial court assessed punishment at confinement for 25 years in the Texas Department of Criminal Justice, Institutional Division. In her sole point of error, appellant contends that the trial court erred in resetting the hearing on appellant's motion for new trial beyond the 75-day time limit. Because we find no reversible error, we affirm the judgment of the trial court.

PROCEDURAL BACKGROUND

On April 25, 1999, appellant filed a motion for new trial asserting that the judgment was not supported by the facts, that her plea was involuntary, and that the prosecution was tainted by a conflict of interest in that several prosecutors were material fact witnesses to the offense. The motion was supported by the affidavits of appellant, appellant's counsel for the motion for new trial, and appellant's trial counsel. On May 26, 1999, the trial court set the hearing for June 4, 1999, 72 days after appellant's sentence was imposed.

On June 3, 1999, appellant's counsel learned that the trial court had not timely issued a bench warrant for appellant. The hearing was reset for June 11, 1999, 79 days after sentencing. Appellant did not object to the resetting of the hearing. On June 11, 1999, the trial court announced that appellant's motion for new trial was overruled by operation of law.

DISCUSSION

In her sole point of error, appellant asserts that the trial court erred in failing to set her hearing on the motion for new trial within the seventy-five-day period required by Rule 21.8 of the Texas Rules of Appellate Procedure.

The right to a hearing on a motion for new trial is not an absolute right. *See Reyes v. State*, 849 S.W.2d 812 (Tex. Crim. App. 1993); *Bacey v. State*, 990 S.W.2d 319, 335 (Tex. App.–Texarkana 1999, no pet.). In *Baker v. State*, 956 S.W.2d 19 (Tex. Crim. App. 1997), the appellant argued that the trial court had erred in not hearing appellant's motion for new trial within the required seventy-five days. *See id.* at 24. Without objection from appellant, the trial judge set a hearing on the motion outside the seventy-five-day period. *See id.* The Court of Criminal Appeals held that by failing to object to the untimely setting, the appellant had failed to preserve his complaint that the trial judge should have held a timely hearing. *See id.* at 24-25. *Crowell v. State*, 949 S.W.2d 37 (Tex. App.–San Antonio 1997, no pet.) follows the same reasoning. In *Crowell*, the State argued that Crowell had waived her complaint because

she failed to bring the trial court's error in setting a hearing date outside its jurisdiction to the court's attention. *See id.* at 38. The court of appeals held that when a motion for new trial is presented to the trial court, the burden of ensuring that the hearing thereon is set for a date within the trial court's jurisdiction is properly placed on the party presenting the motion. *See id.* Crowell failed to object to the date set and thus waived the resulting error. *See id.*

Because appellant did not object and bring to the trial court's attention its failure to schedule a hearing within the seventy-five-day period, we hold that she waived her complaint. We overrule appellant's sole point of error and affirm the judgment of the trial court.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed August 31, 2000.
Panel consists of Justices Amidei, Anderson, and Frost.
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