



WANDA HARPER OBARTS v. STATE

320 S.W.2d 816 (1959) | Cited 0 times | Court of Criminal Appeals of Texas | February 11, 1959

The offense is operating a motor vehicle upon a public highway while intoxicated; the punishment, 30 days in jail and a fine of \$100.

The verdict was returned on May 23, 1958, and judgment was entered.

Motion for new trial was filed on the same day. Amended motion for new trial was filed on June 12, 1958.

The amended motion for new trial was overruled by operation of law at the expiration of the twenty days allowed by Art. 755 V.A.C.C.P., and the judgment became final. See Mahan v. State, 163 Tex. Crim. 36, 288 S.W.2d 508; DeHay v. State, 163 Tex. Crim. 516, 294 S.W.2d 401; Atkinson v. State, 164 Tex. Crim. 421, 299 S.W.2d 951; Barton v. State, 165 Tex. Crim. 582, 310 S.W.2d 90; Pruitt v. State, 165 Tex. Crim. 641, 310 S.W.2d 338; Brinkley v. State, No. 29926 (page , this volume), 320 S.W.2d 855; Torrez v. State, No. 29947, (page 25, this volume), 316 S.W.2d 417; Brantley v. State, No. 30263 (page 145, this volume), 320 S.W.2d 825.

No notice of appeal was given at the term of court during which the judgment was rendered and become final, as required by Art. 827 V.A.C.C.P.

On July 7, 1958, the court entered an order overruling appellant's motion for new trial and pronounced sentence reciting that appellant gave notice of appeal.

In view of the majority holding in Feagin v. State, 166 Tex. Crim. 3, 310 S.W.2d 99, holding void the amendment of Art. 768 V.A.C.C.P. providing for sentence in misdemeanor cases as well as felonies, the sentence is a nullity and the notice of appeal therein comes too late.

The appeal is dismissed.

Disposition

Appeal Dismissed.

