**Affirm and Opinion filed May 4, 2000.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-98-00906-CR**

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**RICARDO RIVERA, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 184th District Court**
**Harris County, Texas**
**Trial Court Cause No. 767,806**

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## O P I N I O N

Appellant, Ricardo Rivera, was indicted for the offense of possession of marihuana, weighing more than fifty pounds, but less than two thousand pounds. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.121 (Vernon Supp. 1999). He pleaded guilty to the charge and the trial judge assessed punishment at ten years confinement. In his sole point of error, appellant contends that the trial court erred in denying his motion for new trial because he received ineffective assistance from counsel. We affirm.

The trial judge sentenced appellant on July 15, 1998. Appellant filed a notice of appeal two days later. On August 17, 1998, appellant filed a motion for new trial alleging that his trial counsel was ineffective. The hearing was held on October 1, 1998. At the hearing, appellant introduced evidence to

show that his attorney misinformed him about the punishment range for the offense. The trial judge denied the motion. The hearing and the trial judge's ruling on the motion for new trial occurred more than seventy five days after sentence was imposed.

A motion for new trial is overruled by operation of law if it is not determined within seventy five days after sentence is imposed or suspended in open court. *See* TEX. R. APP. P. 21.8. After seventy five days, the trial court loses jurisdiction and cannot rule on the motion. *See State v. Garza*, 931 S.W.2d 560, 562 (Tex. Crim. App. 1996). A hearing conducted after a motion for new trial is overruled by operation of law and will not be considered on appeal. *See Trevino v. State*, 565 S.W.2d 938, 941 (Tex. Crim. App. 1978) (construing Act of May 27, 1965, 59th Leg., R.S., ch. 722, § 1, art. 40.05, 2 1965 Tex. Gen. Laws 317, 477 (TEX. CODE CRIM. PROC. ANN. Art. 40.05, since repealed)); *Laidley v. State*, 966 S.W.2d 105, 107 (Tex. App.–Houston [1st Dist.] 1998, pet. ref'd).

We hold that the trial court did not err in denying appellant's motion for new trial because the court already lost jurisdiction of the case. Furthermore, because we cannot consider the testimony for the hearing, we are unable to conclude that appellant's trial counsel was deficient.[1] We overrule appellant's sole point of error and affirm the judgment of the trial court.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed May 4, 2000.
Panel consists of Justices Cannon, Draughn, and Hutson-Dunn.[*]
Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] The State points out, and we agree, that appellant remains free to seek a post conviction writ of habeas corpus on an ineffective assistance of counsel claim. *See* TEX. CODE CRIM. P. art. 11.07 (1998).

[*] Senior Justices Bill Cannon, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.