

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs May 8, 2007

STATE OF TENNESSEE v. GREGORY O. CHERRY

**Appeal from the Circuit Court for Hardin County
No. 8429 C. Creed McGinley, Judge**

No. W2006-00015-CCA-R3-CD - Filed July 27, 2007

Appellant, Gregory O. Cherry, was found guilty by a jury of possession of over .5 grams of cocaine with the intent to sell, delivery of under .5 grams of cocaine, and possession of drug paraphernalia. As a result, he was sentenced to a total effective sentence of eight years. The trial court ordered Appellant to serve the effective eight-year sentence consecutively to sentences in case numbers 8395 and 8396.¹ Appellant filed a motion for new trial. Appellant appeals, arguing that the trial court erred by refusing to suppress Appellant's confession and improperly refused to suppress evidence obtained by a warrantless search of Appellant's car. Appellant also contends that the evidence was insufficient to sustain the convictions. Because the record does not indicate that the trial court denied Appellant's motion for new trial, we determine that we lack jurisdiction to hear the case and dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Dismissed.

JERRY L. SMITH, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J. and NORMA MCGEE OGLE, J., joined.

Vance W. Dennis, Savannah, Tennessee, for the appellant, Gregory O. Cherry.

Robert E. Cooper, Jr., Attorney General & Reporter; Benjamin A. Ball, Assistant Attorney General; Robert Radford, District Attorney General; and John W. Overton, Jr., Assistant District Attorney General, for the appellee, State of Tennessee.

¹The nature of the charges and/or convictions arising out of cases 8395 and 8396 is unclear from the record.

OPINION

Factual Background

Appellant was convicted of possession of over .5 grams of cocaine with the intent to sell, delivery of under .5 grams of cocaine, and possession of drug paraphernalia after a jury trial in September of 2005. The trial court subsequently sentenced Appellant to an effective eight-year sentence on October 12, 2005. The record contains a motion for new trial timely filed by Appellant on October 26, 2005. In that motion, Appellant argues that: (1) the trial court erred in denying a motion to sever the offenses; (2) the trial court erred in denying the motion to suppress property seized as a result of the search of his residence; (3) the trial court erred in overruling the motion to suppress his statements; (4) the evidence was insufficient to sustain the convictions; and (5) Appellant was denied a fair trial by the combination of all of the errors. Appellant filed a notice of appeal on January 3, 2006, purporting to appeal from “the final judgment entered in this action on the 5th day of December, 2005.” The record does not contain an order or transcript of any proceedings showing that a disposition was made on the motion for new trial.

Rule 4(c) of the Tennessee Rules of Appellate Procedure provides that in criminal cases, “if a timely motion or petition under the Tennessee Rules of Criminal Procedure is filed in the trial court by the defendant . . . under Rule 33(a) for a new trial [,] . . . the time for appeal for all parties shall run from entry of the order denying a new trial.” Until the trial court denies the motion for a new trial, the appellate court does not have jurisdiction over the case. *See Hutchison v. ARO Corp.*, 653 S.W.2d 738 (Tenn. Ct. App. 1983); *State v. James Lee Foreman, II*, No. M2002-01595-CCA-R3-CD, 2004 WL 404696 (Tenn. Crim. App., at Nashville, Mar. 4, 2004); *State v. Landy G. Kash*, No. 01C01-9705-CR-00179, 1998 WL 74352 (Tenn. Crim. App., at Nashville, Feb. 23, 1998). Thus, in order for this Court to have jurisdiction to address the merits of the appeal, the record must contain an order disposing of the motion for new trial. Because there is no such order in the record, this case is dismissed for lack of jurisdiction.

JERRY L. SMITH, JUDGE