

**Dismissed and Opinion filed January 31, 2002.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-01-00864-CR**

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**ANDRES CORONA LARA, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Criminal Court at Law No. 13  
Harris County, Texas  
Trial Court Cause No. 1041750**

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**MEMORANDUM OPINION**

On November 19, 2001, appellant filed a motion to abate the appeal for a hearing on appellant's motion for new trial. Appellant filed a timely motion for new trial in the trial court, which the trial court set for a hearing on June 14, 2001. This hearing was cancelled after Tropical Storm Allison. The trial court rest the hearing to August 9, 2001. The motion for new trial, however, was overruled by operation of law on July 25, 2001. *See* TEX. R. APP. P. 21.8.

A trial court abuses its discretion in failing to hold a hearing on a motion for new trial

that raises matters which are not determinable from the record. *Reyes v. State*, 849 S.W.2d 812, 816 (Tex. Crim. App. 1993). To be entitled to a hearing, the appellant must have timely filed and presented a motion for new trial supported by affidavit, either of the accused or someone else specifically showing the truth of the grounds of attack. *Id.* Appellant timely filed his motion, supported by affidavits, alleging (1) ineffective assistance of counsel, and (2) newly discovered evidence.

The courts have recognized that, in appropriate cases, abatement is proper:

We should not be understood as restricting court of appeals' power to abate an appeal and remand a case under authority other than Rule 2(b). When judicial resources can be conserved in the interest of justice, we encourage the courts of appeals to adopt and continue to use methods for resolving issues sooner rather than later, as long as such methods are legally endorsed.

*Oldham v. State*, 977 S.W.2d 354, 360 (Tex. Crim. App.1998). *See also Jack v. State*, 42 S.W.3d 291 (Tex. App.–Houston [1st Dist.] 2001, no pet. h.) (abating appeal for hearing on motion for new trial); *Martinez v. State*, 846 S.W.2d 345 (Tex. App.–Corpus Christi 1992, no pet.) (same).

Based on this law, we granted appellant's motion. We ordered the appeal abated and remanded the cause to the trial court for a hearing on appellant's motion for new trial.

On January 23, 2002, a supplemental reporter's record from the hearing was filed in this Court. At the hearing, with the agreement of all parties, the trial court granted appellant's motion for new trial. Because the trial court granted appellant's motion for new trial, this appeal is now moot. Accordingly, we dismiss the appeal.

PER CURIAM

Judgment rendered and Opinion filed January 31, 2002.

Panel consists of Justices Yates, Edelman, and Guzman.

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