



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-18-00437-CR

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**BRIANE MOSS, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 364th District Court  
Lubbock County, Texas  
Trial Court No. 2016-408,577, Honorable William R. Eichman II, Presiding

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June 29, 2020

**MEMORANDUM OPINION**

Before QUINN, C.J., and PARKER and DOSS, JJ.

Briane Moss, appellant, appeals her conviction for evading arrest in a vehicle,<sup>1</sup> asserting that the trial court erred in failing to hold a hearing on her motion for new trial. We affirm the judgment of the trial court.

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<sup>1</sup> See TEX. PENAL CODE ANN. § 38.04(b)(2)(A) (West 2016).

## Background

In August of 2016, appellant pleaded guilty to the offense of evading arrest in a vehicle. The court placed her on deferred adjudication community supervision for a period of four years. The State filed an amended petition to proceed to adjudication in January of 2018. At the hearing on the State's petition, appellant pleaded "true" to the State's allegations of failure to submit a nondilute urine specimen on multiple dates, failure to abide by the curfew imposed as a condition of community supervision, and failure to follow the rules and regulations of the Lubbock County DWI Court Program. She also pleaded "true" to some but not all of the State's allegations that she failed to abstain from the use or possession of alcoholic beverages and narcotics.

The trial court adjudicated appellant guilty and sentenced her to ten years' confinement in the Texas Department of Criminal Justice; however, the trial court suspended the sentence and placed appellant on community supervision for five years. Appellant filed a motion for new trial, which was overruled by operation of law.

## Analysis

In her sole issue on appeal, appellant contends that the trial court abused its discretion when it did not grant a hearing on her motion for new trial. We review a trial court's decision regarding whether to hold a hearing on a motion for new trial in a criminal case under an abuse of discretion standard. *Wallace v. State*, 106 S.W.3d 103, 108 (Tex. Crim. App. 2003) (en banc).

After the judgment was entered, appellant timely filed a motion for new trial. The motion stated: "In support of defendant's motion, the following facts outside the record

are hereby alleged: Defendant sought to have testimony and records introduced from Dr. Porto—her treating doctor and was not able. Defendant sought to introduce her finding of disability and was not able.” Based on appellant’s briefing on appeal, it appears that appellant’s grounds for new trial were ineffective assistance of counsel and newly discovered evidence.<sup>2</sup>

Appellant’s motion for new trial alleged matters not determinable from the record. However, the motion was neither verified nor supported by an affidavit. The Court of Criminal Appeals has held that, as a prerequisite to obtaining a hearing on a motion for new trial, the motion must be supported by an affidavit showing the truth of the grounds of attack. *Reyes v. State*, 849 S.W.2d 812, 816 (Tex. Crim. App. 1993) (en banc); see also *Bearden v. State*, 648 S.W.2d 688, 690 (Tex. Crim. App. 1983) (en banc) (stating that, while the Code of Criminal Procedure does not require that a motion for new trial be verified, the court has consistently held that, without a supporting affidavit, a motion for new trial based on matters outside the record is insufficient as a pleading). While the affidavit is not required to “reflect every component legally required to establish” relief, the motion or affidavit must reflect that reasonable grounds exist for relief to be granted. *Reyes*, 849 S.W.2d at 816 (citing *McIntire v. State*, 698 S.W.2d 652, 658 (Tex. Crim. App. 1985)).

Because appellant’s motion for new trial was based on matters extrinsic to the record but was not supported by an affidavit, the motion was insufficient as a matter of

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<sup>2</sup> Appellant contends that trial counsel was ineffective for failing to contact her treating psychiatrist, Dr. Porto, to testify on her behalf. She contends that evidence of her disability is “new evidence” and recites the standard for a new trial based upon newly discovered evidence.

law. We therefore find no abuse of discretion by the trial court in failing to grant a hearing on the motion.<sup>3</sup>

### Conclusion

Having overruled appellant's only issue, we affirm the judgment of the trial court.

Judy C. Parker  
Justice

Do not publish.

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<sup>3</sup> We further note that the motion itself does not request a hearing on the motion and the record is devoid of evidence of any express request for such a hearing.