

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

MARVIN D. BESENDORFER

Appellant

DOCKET NUMBER **WD73968**

DATE: August 14, 2012

Appeal From:

Circuit Court of Bates County, MO
The Honorable James Kelso Journey, Judge

Appellate Judges:

Division Four
James Edward Welsh, C.J., Thomas H. Newton, J., and Owens L. Hull, Sp. J.

Attorneys:

Kent Denzel, Columbia, MO

Counsel for Appellant

Attorneys:

Timothy Blackwell, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STATE OF MISSOURI, Respondent, v.
MARVIN D. BESENDORFER, Appellant

WD73968

Bates County

Before Division Four Judges: Welsh, C.J., Newton, J., and Hull, Sp. J.

A law enforcement officer found Besendorfer asleep in the front seat of his pickup truck, which was stuck in a snow bank off the side of the highway. After observing Besendorfer's behavior, briefly interviewing him, and administering field sobriety tests, the officer arrested Besendorfer for driving while intoxicated. After a bench trial, the trial court found Besendorfer guilty. On that same day, the trial court entered a judgment and sentence. Besendorfer did not waive his right to file a motion for new trial, nor had the time period expired. Besendorfer appeals.

DISMISSED.

Division Four Holds:

In his first point, Besendorfer concedes that Rule 29.11 was not followed by the trial court, yet contends we should address his appeal on the merits because he now waives his right to move for a new trial. In his second point, Besendorfer challenges the sufficiency of the evidence to support his conviction.

Rule 29.11(b) provides that “[a] motion for new trial . . . shall be filed within fifteen days after the return of the verdict.” Rule 29.11(c) prohibits the circuit court from rendering judgment until the time for filing a motion for new trial has expired. Consequently, absent the defendant's waiver, any judgment entered before the period for filing the motion for new trial has expired is void. Where judgments are premature and void, there is no judgment from which to appeal. In such circumstances, we cannot resolve the judgment on its merits and are required to dismiss the appeal and remand the case to the trial court.

Here, the circuit court sentenced Besendorfer on the day of his conviction, although Besendorfer had not waived his right to move for a new trial and fifteen days had not elapsed from his conviction. The judgment was premature and void. Although Mr. Besendorfer requests that we allow him to waive the right on appeal, we have no authority to do so and must dismiss.

Opinion by Thomas H. Newton, Judge

August 14, 2012

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