

Dismissed and Opinion filed January 11, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-00268-CR
NO. 14-99-00269-CR

MICHAEL TARANTINO JONES, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 774373, 774374**

OPINION

This is a consolidated appeal from appellant's convictions in the above cause numbers. In a single issue for review, appellant Michael Tarantino Jones appeals the trial court's denial of his motion for new trial in each cause. For the reasons set out below, we dismiss the appeal in each cause for want of jurisdiction.

Background

On April 27, 1998, appellant entered pleas of guilty for the felony offenses of Possession With Intent to Manufacture or Deliver a Controlled Substance (cause number 774373) and Escape (cause

number 774374). The court then granted appellant deferred adjudication community supervision for six years in each cause and ordered him to complete 400 hours of community service as well as pay fines, fees, and court costs. After failing to comply with the terms of his probation, the trial court, on January 27, 1999, granted the State's motion to adjudicate guilt and sentenced appellant to twelve years and ten years confinement in cause numbers 774373 and 774374, respectively. Alleging that his original pleas given at the deferred adjudication hearing were involuntary, appellant, on February 26, 1999, filed motions for new trial. Upon conclusion of a hearing, the trial court then denied the motion. In his sole point of error appellant now appeals the trial court's decision, alleging an involuntary plea due to his own incompetence as well as his trial counsel's ineffective assistance.

Jurisdictional Issue

Before reaching appellant's point of error, we examine the State's contention that this Court lacks jurisdiction to consider appellant's plea on appeal. We address our jurisdiction over each appeal concurrently. Citing *Manuel v. State* and Rule of Appellate Procedure 26.2(a)(1), the State argues that a defendant placed on deferred adjudication must appeal from the deferred adjudication order, as opposed to a later adjudication of guilt on that order, within thirty 30 days of such order. *See Manuel v. State*, 994 S.W.2d 658 (Tex. Crim. App. 1999). Pursuant to this authority, then, the State asserts that we lack jurisdiction over this appeal due to Appellant's failure to file written notice of appeal until after his adjudication of guilt.

Rule of Appellate Procedure 26.2 provides, in pertinent part, that a criminal defendant must file notice of appeal "within 30 days after the day sentence is imposed or suspended in open court, or after the day the trial court enters an appealable order" TEX. R. APP. P. 26.2(a)(1). As pointed out by the State, the Court of Criminal Appeals has recently addressed the application of this rule to a situation involving an appeal from an adjudication of guilt on a deferred adjudication order. *See Manuel* 994 S.W.2d at 659. In *Manuel*, the appellant, after having received deferred adjudication probation for indecency with a child, sought to appeal his subsequent adjudication of guilt by contending that the evidence adduced at his original plea proceeding had been insufficient to prove his guilt. *Id* at 660. Concluding that the defendant's appeal was untimely, the Court held that a defendant placed on deferred adjudication

community supervision may raise issues relating to the original plea proceeding only in appeals taken when deferred adjudication community supervision is first imposed. *Id.* at 661-62.

In the instant case, Appellant pleaded guilty and received deferred adjudication community supervision on June 27, 1998. Nine months later, the trial court adjudicated his guilt and revoked his community supervision. Appellant could have appealed from the order placing him on deferred adjudication and raised the voluntariness of his plea following his original plea hearing. Based on the holding in *Manuel* and our recent decision in *Hanson v. State*, his failure to do so precludes us from now hearing the merits of his complaints. *See Hanson v. State*, 11 S.W.3d 285, 287 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd) (holding that an appellate court lacks jurisdiction to review the merits of a complaint regarding the voluntariness of an original plea on appeal from an order revoking deferred adjudication community supervision). Accordingly, we are without jurisdiction to consider Appellant's issue for review and dismiss his appeal.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed January 11, 2001.

Panel consists of Chief Justice Murphy and Justices Amidei, Hudson.¹

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

¹ Former Justice Maurice Amidei sitting by assignment.