Affirmed and Opinion filed January 25, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-98-01143-CR

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DEDRIC LEMON HARBOR, Appellant

V.

THE STATE OF TEXAS , Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 773,995

O P I N I O N

Dedric Lemon Harbor, appellant, pleaded guilty to a charge of burglary of a habitation. The trial court found the evidence sufficient to support a finding of guilt, but deferred the adjudication of guilt until a presentence investigation report could be prepared. At a subsequent hearing, the trial court found appellant guilty. Appellant pleaded "true" to an enhancement paragraph alleging a prior felony conviction, and the trial court assessed punishment at fifteen years' confinement. In two points of error appellant complains the trial court erred because the trial court's oral pronouncements were at odds with the evidence in the cause, and argues the trial court failed to admonish him as to the range of punishment he

faced. We affirm.

Appellant's first complaint is, in essence, that he was sentenced for a crime not supported by the evidence. The trial court announced that he was being found guilty of "burglary with intent to commit an assault." The indictment alleged he had committed burglary of a habitation by entering the habitation of another with intent to commit a) aggravated assault or b) theft. The state abandoned the second paragraph in appellant's plea papers and produced evidence supporting the first paragraph.

The recitations in a signed judgment are presumed correct absent evidence to the contrary. *See Breazeale v. State*, 683 S.W.2d 446, 450 (Tex. Crim. App. 1984)(op. on reh'g). Consequently, the complete absence of an oral pronouncement of guilt does not override a written judgment reflecting a finding of guilt. *Villela v. State*, 564 S.W.2d 750 (Tex. Crim. App. 1978); *Parks v. State*, 960 S.W.2d 234, 238 (Tex. App. – Houston [1st Dist.] 1997, pet. ref'd). If this is true in a case with a complete absence of an oral finding of guilt, it must also be the case with an incomplete oral finding of guilt. Furthermore, where a conflict does exist between a trial court's written judgment and its oral pronouncements at trial, the written order controls. *Eubanks v. State*, 599 S.W.2d 815, 817 (Tex. Crim. App. 1980); *Francis v. State*, 792 S.W.2d 783, 784 (Tex. App.—Houston [14th Dist.] 1990, pet. ref'd). We therefore overrule appellant's first point of error.

In his second point of error appellant argues the trial court failed to admonish him about the range of punishment he faced before accepting his plea of guilty. He specifically complains that he was not warned that, due to the length of the sentence imposed, he was not eligible for regular community supervision.

A trial judge is required to admonish a defendant about the range of punishment he faces before accepting a plea of guilty. TEX. CODE CRIM. PROC. ANN. art. 26.13(a) (Vernon 1989). Substantial compliance is sufficient unless the defendant affirmatively shows he was misled or harmed by the admonishment of the court. *Id*. at 26.13(c). "Substantial compliance" means that the trial court undertook to admonish the defendant, the sentencing was within the range of punishment prescribed by law, and the defendant has failed to affirmatively show harm. *Hughes v. State*, 833 S.W.2d 137, 140 (Tex. Crim.

App. 1992).

The hearing at which the trial court admonished appellant was not transcribed. Our record contains a standard written admonishment form, with a space beside each paragraph for the defendant's initials. The paragraph covering the range of punishment, which indicated that defendant could be facing a minimum of 15 years if enhanced by a prior conviction, was not initialed by appellant. However, the trial court wrote on the plea papers that "Def. sd. he understood no promises made & if ct. gives pen time he's looking at minimum of 15 yrs." Additionally, appellant initialed admonishment paragraphs in which he asserted that he "fully understood the consequences of my plea herein" and that "[j]oined by my counsel, I state that I understand the foregoing admonishments and I am aware of the consequences of my plea."

The relevant sections of the statute do not require that the defendant initial each written admonishment paragraph. *See Lopez v. State*, 25 S.W.3d 926, 929 (Tex. App.—Houston [1st Dist.] 2000, no pet. h.). When the written plea papers and the judgment recite that the judge admonished appellant of the consequences of his plea, and appellant does not bring forward other evidence to the contrary, he has failed to show he was not fully admonished as required by law. *Id*.

Finally, appellant complains that he was not admonished that, if his conviction was enhanced, he would not be eligible for standard community supervision. However, the trial court is not required to admonish a defendant on his eligibility for community supervision. *See Harrison v. State*, 688 S.W.2d 497, 499 (Tex. Crim. App. 1984); *Shields v. State*, 608 S.W.2d 924, 927 (Tex. Crim. App. 1980).

Because appellant brings forward no evidence other than the plea papers, and these papers contain an affirmative indication that he was admonished at the plea hearing, and because the trial court was not under an affirmative duty to admonish as to eligibility for probation, we overrule his second point of error and affirm the judgment of the trial court.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed January 25, 2001.

Panel consists of Justices Robertson, Sears, and Lee.*

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*Senior Justices Sam Robertson, Ross A. Sears and Norman Lee sitting by assignment.