

**Affirmed and Opinion filed March 28, 2002.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-98-00867-CR**

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**ALAN WILLIAM WHITELOW a/k/a WILLIAM JOHN, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 337<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 785,647**

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**OPINION**

Appellant, Alan William Whitelaw, was convicted by a jury of the offense of aggregate theft and sentenced to sixty years' imprisonment. On original submission, this Court found no error in the trial court's failure to order a pre-sentence investigation (PSI) report as requested by appellant. *Whitelaw v. State*, No. 14-98-00867-CR, 1999 WL 1123016 (Tex. App.—Houston [14th Dist.] Dec. 12, 1999, pet. granted). The Court of Criminal Appeals disagreed, reversed our initial opinion, and remanded the case "for proceedings consistent with th[eir] opinion." *Whitelaw v. State*, 29 S.W.3d 129 (Tex. Crim. App. 2000). On remand, we held that we had no authority to conduct a harm analysis, and ordered a new

trial on punishment. *Whitelaw v. State*, No. 14-98-00867-CR, 2001 WL 521669 (Tex. App.—Houston [14th Dist.] May 17, 2001, pet. granted). The Court of Criminal Appeals again disagreed, vacated our second opinion, and remanded with instructions to conduct a harm analysis pursuant to Texas Rule of Appellate Procedure 44.2(b). *Whitelaw v. State*, No. 1753-01 (Tex. Crim. App. Nov. 28, 2001) (per curiam). We find the trial court’s failure to order a PSI report harmless, and affirm.

When applying the “other errors” standard under rule 44.2(b), nonconstitutional errors are to be disregarded, unless they affect the substantial rights of the appellant. TEX. R. APP. P. 44.2(b); *Torres v. State*, 59 S.W.3d 365, 367 (Tex. App.—Houston [14th Dist.] 2001, no pet. h.). A “substantial right” is affected when the error had a substantial and injurious effect or influence in determining the jury’s verdict. *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997) (citing *Kotteakos v. U.S.*, 328 U.S. 750, 776 (1946)). In assessing the impact the error may have had on the punishment decision, we consider the entire record, the nature of the evidence supporting the punishment decision, the character of the error, and how it might be considered in connection with other evidence in the case. *Yarbrough v. State*, 57 S.W.3d 611, 619 (Tex. App.—Texarkana 2001, pet. filed Oct. 30, 2001) (citing *Morales v. State*, 32 S.W.3d 862, 867 (Tex. Crim. App. 2000)).

The purpose of a PSI is to provide the trial court with information regarding “the circumstances of the offense with which the defendant is charged, the amount of restitution necessary to adequately compensate a victim of the offense, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the judge.” TEX. CODE CRIM. PROC. ANN. Art. 42.12 § 9(a) (Vernon Supp. 2002). Thus, “[t]he only conceivable harm to [appellant] that could result from the trial court’s refusal to order a PSI report would be [his] inability to call the judge’s attention to favorable information about [his] character or social history that could potentially contribute to a lenient sentence.” *Yarbrough*, 57 S.W.3d at 619.

Here, however, appellant enjoyed a full punishment hearing at which he availed himself of the opportunity to testify. Appellant's testimony brought to light his education and job skills, his prior ownership and operation of a business, that he had successfully completed probation for another felony offense, had not harmed others in the past, and had a network of moral support awaiting him on his release from prison. Despite this evidence, the trial court found no basis for leniency when announcing the sentence:

I have never heard of anything like this in my life. I have been a part of the justice system for forty-five years. I have never heard anything like this. . . . I have never in my life heard evidence nor read records . . . that . . . would even hold a candle to what this defendant did. If you gave me any reason for showing leniency, I haven't heard a word.

Moreover, appellant does not now argue that there was any other evidence or information of which the trial court should have been aware in imposing his sentence. Thus, there was no showing that appellant's substantial rights were harmed by the trial court's failure to order the requested PSI report.

The judgment of the trial court is affirmed.

/s/ J. Harvey Hudson  
Justice

Judgment rendered and Opinion filed March 28, 2002.

Panel consists of Justices Hudson, Fowler, and Edelman.

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