

Dismissed and Opinion filed June 29, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00959-CR

ALFRED J. PRESIDENT, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 228th District
Harris County, Texas
Trial Court Cause No. 753,167**

OPINION

Appellant Alfred J. President pleaded no contest to aggravated assault, and the trial court placed him on deferred adjudication probation for five years. Before President completed this five-year period, the trial court adjudicated his guilt and assessed punishment at seven years' imprisonment. President appeals in four points of error that the trial court violated his federal and state rights to compulsory process in accepting his plea of no contest and that the record is silent about whether he waived his rights to compulsory process. We dismiss President's appeal because we have no jurisdiction to scrutinize error that allegedly occurred in the hearing in which he first received deferred adjudication.

President's appeal is an attack on the original proceeding in which he received deferred adjudication. He could have appealed from the order placing him on deferred adjudication probation and could have argued at that time that he had not waived his rights to compulsory process and that such rights had been violated. Instead, he waited to appeal until after his deferred adjudication probation had been revoked and his adjudication of guilt formally made. The Texas Court of Criminal Appeals has held such an appeal cannot be made after revocation of the deferred adjudication. *See Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999); *Hanson v. State*, 11 S.W.3d 285, 287-88 (Tex. App.—Houston [14th Dist.] 1999, no pet. h.). Thus, we have no jurisdiction to hear his appeal, and we dismiss points of error one through four.

Further, nothing in the record before this court shows that the trial court prevented President from presenting evidence before accepting his plea of no contest. Nor is there any indication that President objected to his alleged inability to present evidence. Such failure to preserve error would constitute waiver on appeal, were we able to assert jurisdiction. *See* TEX. R. APP. P. 33.1. Finally, even if President's first two points of error are issues that can be raised on appeal for the first time after revocation of deferred adjudication probation, both Houston courts of appeals have specifically overruled these points in *Vanderburg v. State*, 681 S.W.2d 713 (Tex. App.—Houston [14th Dist.] 1984, pet. ref'd) and *Lyles v. State*, 745 S.W.2d 567 (Tex. App.—Houston [1st Dist.] 1988, pet. ref'd).

Accordingly, we dismiss President's appeal for want of jurisdiction.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed June 29, 2000.

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

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

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

