Appellant's Motion for Rehearing Overruled, Opinion of May 24, 2001, Withdrawn and Corrected Opinion filed July 12, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00479-CR

JAMES PATRICK CARTON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 718,920

C O R R E C T E D O P I N I O N

Appellant pled guilty without an agreed recommendation as to punishment to the offense of aggravated sexual assault of a child on October 16, 1996. The trial judge deferred adjudication of guilt and placed appellant on community supervision for ten years. The State filed a motion to adjudicate guilt. After a hearing, the trial court found appellant guilty and assessed punishment at confinement for twenty years. In our original opinion of May 24, 2001, this court dismissed the appeal for want of jurisdiction. Appellant has filed a motion for rehearing complaining of factual errors and of our holding

that we have no jurisdiction. We overrule appellant's motion and withdraw our opinion of May 24, 2001, and issue this corrected opinion, dismissing for want of jurisdiction.

Appellant filed a notice of appeal challenging: (1) the trial court's October 16, 1996, order deferring adjudication and placing appellant on community supervision; (2) the judgment adjudicating guilt signed January 12, 2000; and (3) the denial of appellant's motion for new trial. In his brief, however, appellant's complaints are only as to the voluntariness of his original plea of guilty.

Given the plain meaning of Article 42.12, section 5(b) of the Code of Criminal Procedure, an appellant whose deferred adjudication probation has been revoked and who has been adjudicated guilty of the original charge, may not raise on appeal contentions of error in the adjudication of guilt process. *Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999); TEX. CODE CRIM. PROC. ANN. Art. 42.12 § 5(b) (Vernon Supp. 2000). Appellant may only raise issues that occur after adjudication of guilt and assessment of punishment. *See Ditto v. State*, 988 S.W.2d 236, 238 (Tex. Crim. App. 1999).

Nor may we now consider any complaint concerning the original plea because those had to have been raised when deferred adjudication community supervision was first imposed. *Manuel v. State,* 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999). Appellant contends that, because he is challenging the voluntariness of his plea in conjunction with the trial court's ruling on his motion for new trial, this court does have jurisdiction to entertain this appeal. In support of this assertion, appellant cites TEX. CODE CRIM. PROC. ANN. Art. 42.12 (Vernon Supp. 2001). On rehearing, appellant also cites *Olowosuko v. State*, 826 S.W.2d 940 (Tex. (Tex. Crim. App. 1992) and *Jones v. State*, 39 S.W.3d 691 (Tex. App.–Corpus Christi 2001, no pet. h.). We find these cases distinguishable and re-affirm our belief that we must follow the most recent pronouncement from the Court of Criminal Appeals regarding this issue, which is in *Manuel.*

In *Olowosuko,* the court was addressing challenges to the courts decision to proceed to adjudicate the appellant's guilt, not a challenge to the original plea of guilty. 826 S.W.2d at 941. Thus, this case is inapplicable here. However, the court did note that art.

44.01(j) provides for appeal from the trial court's order deferring adjudication of guilt. *Id.* at 942.

Similarly, in *Jones*, the appellant was complaining about action that failed to occur *after* adjudication of guilt, rather than at the time of the original plea. 39 S.W.3d at 692-93. Thus, this case is also inapplicable here.

In *Manuel*, the court held that, despite the provisions of art. 42.12, § 5b, art. 44.01(j) permits appeal from deferred adjudication community supervision. 994 S.W.2d at 661. Therefore, the court reasoned that an appellant placed on deferred adjudication community supervision may now raise issues relating to the original plea proceeding only in appeals taken when deferred adjudication community supervision is first imposed and an appellant is not entitled to two reviews of the legality of the deferred adjudication order, *i.e.*, one a the time deferred adjudication is first imposed, and another when it is later revoked. *Id.* at 661-62. Because the appellant in *Manuel*, did not appeal the order placing him on deferred adjudication and waited until after his community service had been revoked to complain about the original plea, the court held that the court of appeals properly held it had no jurisdiction to hear the appeal. *Id.* at 662.

Here, appellant's only issues concern the voluntariness of his original plea. Appellant did not timely appeal the deferred adjudication community supervision order, and under *Manuel*, we have no jurisdiction to entertain complaints about the original plea after appellant's community supervision was revoked and his adjudication of guilty was formally made.

Accordingly, we dismiss the appeal for want of jurisdiction.

PER CURIAM

Judgment rendered and Opinion filed July 12, 2001.
Panel consists of Justices Yates, Fowler, and Wittig.
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