

Dismissed For Want of Jurisdiction and Opinion filed July 12, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00794-CR

KENNETH A. REDDEN, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 774,706**

OPINION

In 1998, pursuant to a plea agreement, appellant, Kenneth Redden, entered a guilty plea for the felony offense of indecency with a child. In connection with the plea agreement, the trial court deferred adjudication of appellant's guilt and placed him under community supervision for a period of ten years. In March of 2000, the State moved to adjudicate appellant's guilt. The State's motion to adjudicate alleged that appellant violated the conditions of his community supervision, namely failing to participate in HCCS&CD (Harris County Community Supervision and Corrections Department) Community Service Work Probation Program, failing to participate in a sex offender

treatment evaluation until being successfully discharged, and failing to pay various fees as directed by the trial court. Upon finding that appellant violated those conditions, the trial court revoked appellant's community supervision, adjudicated appellant's guilt, and sentenced appellant to five years' confinement in the Texas Department of Criminal Justice, Institutional Division. In two points of error, appellant challenges the constitutionality of the sentence assessed. For the reasons set out below, we dismiss for want of jurisdiction.

By his first point of error, appellant argues that the five year sentence was not proportional to the offense committed, and therefore violated his Eighth and Fourteenth Amendment protections against cruel and unusual punishment. Second, appellant argues that the sentence violates the Texas Constitution's protection against cruel and unusual punishment. Appellant seeks reversal of his conviction and judgment of acquittal or a new trial.

Appellant's complaint pertains to his punishment upon the revocation of his community supervision. However, we lack jurisdiction to entertain appellant's complaint because the notice of appeal did not comply with the requirements of Rule 25.2(b)(3) of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 25.2(b)(3). Rule 25.2(b)(3) provides that when an appeal is from a judgment rendered on a defendant's plea of guilty or nolo contendere, and the punishment assessed does not exceed the punishment recommended by the State and agreed to by the defendant, the notice of appeal must, (1) specify that the appeal is for a jurisdictional defect, (2) specify that the substance of the appeal was raised by written motion and ruled on before trial, or (3) state that the trial court granted permission to appeal. *Id.* Appellant filed a Pauper's Oath and Motion for Appeal Attorney that did not specify a jurisdictional defect, indicate that the substance of the appeal was raised before trial, or state that the trial court had granted permission for

the appeal.¹ Therefore, we are without jurisdiction to consider any of appellant's issues. *See Cooper v. State*, No. 1100-99, slip. op. at 8, 2001 WL 321579 at *1 (Tex. Crim. App. April 4, 2001) (holding that an appellant who files a general notice of appeal may not appeal voluntariness of negotiated plea).

Accordingly, we dismiss the appeal in cause number 14-00-0794-CR for want of jurisdiction.²

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed July 12, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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

¹ Appellant does not complain of lack of counsel during a critical stage of the proceedings against him. In any event, appellate counsel was appointed for appellant within the time to provide adequate notice of appeal.

² We also note that the Supreme Court set out three factors the reviewing court should consider when determining whether the sentence is cruel and unusual: (1) the gravity of the offense and the harshness of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the punishment for the same offense in other jurisdictions. *Solem v. Helm*, 463, U.S. 277, 292 (1983). Therefore, even if we were to find that appellant's appeal was proper, appellant failed to provide this court with the evidence necessary to consider whether his sentence was cruel and unusual. *Id.*