

Dismissed and Opinion filed July 19, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00198-CR

JAVON DAMONTE DANIELS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 94-26286**

OPINION

Appellant, Javon Daniels, entered a plea of guilty for the felony offense of aggravated robbery. TEX. PEN. CODE ANN. § 29.03 (Vernon 1994). The court deferred adjudication of appellant's guilt and sentenced him to ten years community supervision and a \$1,000 fine. Subsequently, the court adjudicated appellant's guilt and sentenced him to ten years confinement in the Institutional Division of TDCJ. In a single issue for review, appellant challenges his conviction. We dismiss this appeal.

Background

Following the trial court's decision to grant deferred adjudication, appellant was arrested for possession of cocaine. On October 14, 1999, the State filed a motion to adjudicate appellant's guilt, alleging that he violated terms and conditions of probation. During a hearing, appellant entered a plea of true to the state's motion to adjudicate guilt. Following sentencing, appellant filed a motion for new trial. The trial court failed or refused to conduct a hearing on appellant's motion. Subsequently, the motion was overruled by operation of law.

Denial of Hearing; Motion For New Trial

In a single issue for review, appellant argues that the trial court abused its discretion by failing to grant a hearing on his motion for new trial. Specifically, appellant argues that his motion raised three matters not determinable from the record: (1) trial counsel was ineffective by informing him of an incorrect punishment range, (2) trial counsel was ineffective by promising bail, where none was permitted by law; and (3) his plea was involuntary. Appellant contends the trial court erred because a hearing is mandatory when matters in question are not discernable from the record.

Jurisdiction

Before addressing appellant's issue, we examine the State's contention that this Court lacks jurisdiction. A defendant who has been adjudicated guilty of the original charge following revocation of probation may not claim error in the adjudication of guilt process. TEX. CODE CRIM. PROC. ANN. Art. 42.12 § 5(b) (Vernon Supp. 2001); *Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999). This denial of appellate review from adjudication of guilt proceedings extends to claims raising issues based on constitutional rights. *Phynes v. State*, 828 S.W.2d 1, 2 (Tex. Crim. App. 1992) (holding that defendant could not appeal a court's decision to adjudicate guilt even though his counsel was not present at the adjudication hearing); *Gareau v. State*, 923 S.W.2d 252, 253 (Tex. App.—Fort Worth 1996, no writ) (holding that court had no jurisdiction to hear appellant's claim of ineffective assistance of

counsel occurring at the adjudication hearing).

Appellant contends the trial court abused its discretion by failing or refusing to timely schedule a hearing. In essence, appellant is seeking to challenge the trial court's decision to proceed with adjudication of guilt by couching his issue as erroneous denial of a hearing on a motion for new trial. Because we have no jurisdiction to consider appellant's contentions of error in the adjudication of guilt process, however, we are unable to consider this issue. TEX. CODE CRIM. PROC. ANN. Art. 42.12 § 5(b) (Vernon Supp. 2001); *Connolly*, 983 S.W.2d at 741. Accordingly, we dismiss this appeal for want of jurisdiction.

/s/

Charles W. Seymore
Justice

Judgment rendered and Opinion filed July 19, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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