Affirmed and Opinion filed September 30, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-01420-CR

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LUIS ORELLANA SINAY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 730865

O P I N I O N

Appellant, Luis Orellana Sinay, pleaded guilty to aggravated robbery before a trial court without an agreed recommendation from the State. *See* TEX. PEN. CODE ANN. § 29.03 (Vernon 1994). The trial court sentenced appellant to twenty years in the Texas Department of Criminal Justice, Institutional Division. In one point of error, he contends his plea was involuntary. We affirm.

In his sole point of error, appellant contends his plea of guilty was involuntary because he lacks the education and command of the English language to understand the admonishments. We determine voluntariness by the totality of the circumstances. *See* U.S. CONST. amend. V; *Penry v. State,* 903

S.W.2d 715, 748 (Tex. Crim. App.), *cert. denied*, 516 U.S. 977 (1995). A plea of guilty must be freely and voluntarily given. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13 (Vernon 1989). A trial judge is responsible for making this determination. *See id.* A record showing the defendant received and signed his written admonishments and waivers is *prima facie* evidence that the plea was freely and voluntarily given. *See Martinez v. State*, 981 S.W.2d 195, 196–97 (Tex. Crim. App. 1998). The burden then shifts to the defendant to show that he entered his plea without knowledge of its circumstances. *See id.* at 197.

The record in this case reflects that appellant's attorney indicated his belief that the defendant entered his plea knowingly and voluntarily and after discussing it with him. The appellant, who attended Bellaire High School (Houston, Texas), initialed the written admonishments, representing that he fully understood the consequences of his plea and that he could read and write the English language. Further, the supplemental record contains appellant's written answers regarding his family, educational, and social history, all of which are written in English in complete sentences. On this record, we find the *prima facie* evidence necessary to show the appellant's guilty plea was freely and voluntarily given. The burden therefore shifts to appellant to establish his plea was not voluntary.

In his answers to questions in his pre-sentence report, appellant stated that, "till this point, I am ashamed to admit [b]ut I still got problem with the Inglish [sic] [l]anguage." Otherwise, there is no indication in the record that appellant was so deficient in the English language that his plea was involuntary. Appellant contends, without explanation, that his lack of voluntariness is established by the fact that he initialed two admonishments, one acknowledging that he could be deported if he is not a citizen and another acknowledging that he reads and writes English. Appellant's acknowledgment of the first paragraph is inconsequential, because the record indicates he is a United States citizen. *See Gorham v. State*, 981 S.W.2d 315, 319 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd). The second paragraph, acknowledging that he reads and writes English, undermines, rather than supports, appellant's claim that his plea was involuntary. The recitations in the trial court record are entitled to the presumption of regularity, and absent direct proof to the contrary, those recitations are binding. *See Moussazadeh v. State*, 962 S.W.2d 261, 264 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd).

Appellant also points to the pre-sentence investigation, which indicates that his schooling in El Salvador was limited, that he dropped out of school in the 11th grade, and that he failed portions of his GED test. His records from the high school he attended in Houston, Texas also indicate, however, that appellant received passing grades in language arts classes until the 11th grade. Finally, appellant contends the trial court should have inquired as to whether or not he had an adequate understanding of the English language. Article 26.13 of the Texas Code of Criminal Procedure, however, imposes no obligations on a trial court except to advise the defendant of the consequences of his plea before accepting it. The statute does not require the judge to make any inquiry of a defendant. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13; *Rachuig v. State*, 972 S.W.2d 170, 177 (Tex. App.—Waco 1998, pet. ref'd). Furthermore, appellant, having waived his right to have a court reporter record the plea proceedings, failed to preserve any such error. We must presume the recitations found in the documents, including that the trial court admonished the appellant in accordance with the law and found appellant's plea was freely and voluntarily given, to be accurate unless appellant can show otherwise. *See Drew v. State*, 942 S.W.2d 98, 99 (Tex. App.—Amarillo, 1997, no writ). Appellant has not provided any evidence to overcome that presumption.

We overrule appellant's sole point of error and affirm the judgment of the trial court.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed September 30, 1999.

Panel consists of Justices Yates, Fowler and Frost.

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