

Affirmed and Opinion filed November 24, 1999.



In The

Fourteenth Court of Appeals

NO. 14-97-00638-CR

JAMES EDWARD DORSEY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 94-03161**

OPINION

In one point of error, appellant James Edward Dorsey appeals that the trial court erroneously refused to grant him a new trial after it revoked his deferred adjudication probation for aggravated robbery. Because the trial court did not abuse its discretion in refusing to grant a new trial, we affirm.

Dorsey pleaded guilty to aggravated robbery without an agreed recommendation for punishment from the State. The trial court originally placed him on deferred adjudication probation, but ultimately revoked it and sentenced Dorsey to ten years' imprisonment. After the revocation of his deferred adjudication, Dorsey filed a motion for new trial, claiming that ineffective assistance of counsel made his original plea involuntary. The trial court denied the motion for new trial, and Dorsey appeals.

It is well established that the grant or denial of a motion for new trial is within the discretion of the trial court. *Lewis v. State*, 911 S.W.2d 1, 7 (Tex. Crim. App. 1995); *State v. Read*, 965 S.W.2d 74, 77-78 (Tex. App.--Austin 1998, no pet.). Abuse of discretion occurs when the trial court's decision was arbitrary or unreasonable. The test has been stated as being "a question of whether the court acted without reference to any guiding rules and principles." *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990) (quoting *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex.1985)). We thus determine whether the trial court's denial of Dorsey's motion for new trial was arbitrary or unreasonable.

We hold that the trial court's denial of Dorsey's motion for new trial was neither arbitrary nor unreasonable. Dorsey's motion for new trial improperly challenges the voluntariness of his original plea following his revocation hearing. A defendant must appeal the involuntariness of his plea at the time he receives deferred adjudication, not after the trial court adjudicates guilt. *Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999); *Clark v. State*, 997 S.W.2d 365, 368 (Tex. App.--Dallas 1999, no pet). The Court of Criminal Appeals has recently held that a defendant may not complain about error in the original plea proceeding on a direct appeal from an adjudication of guilt. *See Manuel*, 994 S.W.2d at 661-62; *see also Anthony v. State*, 962 S.W.2d 242, 244 (Tex. App.--Fort Worth 1998, no pet.); TEX. CODE CRIM. PROC. art. 42.12, § 5(b) (Vernon Supp. 1999). Thus, the trial court's denial of Dorsey's motion for new trial was not an abuse of discretion. We overrule Dorsey's sole point of error and affirm the judgment of the trial court.

Joe L. Draughn
Justice

Judgment rendered and Opinion filed November 24, 1999.

Panel consists of Justices Sears, Cannon, and Draughn.*

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

* Senior Justices Ross A. Sears, Bill Cannon, and Joe L. Draughn sitting by assignment.