Opinion filed July 9, 2020

In The

Eleventh Court of Appeals

No. 11-18-00169-CR

MIGUEL SANCHEZ SALAZAR A/K/A MIKE SANCHEZ SALAZAR A/K/A MIGUEL SALAZAR, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 350th District Court
Taylor County, Texas
Trial Court Cause No. 12574-D

O P I N I O N

Appellant, Miguel Sanchez Salazar a/k/a Mike Sanchez Salazar a/k/a Miguel Salazar, originally pleaded guilty to the offense of assault family violence. *See* TEX. PENAL CODE ANN. § 22.01(b)(2)(B) (West Supp. 2019). Appellant also pleaded true to two prior felony convictions alleged for enhancement purposes. One of those prior felony convictions was for indecency with a child. Pursuant to the terms of a

plea agreement, the trial court deferred a finding of guilt and placed Appellant on community supervision for seven years.

The State later filed a motion to revoke community supervision and adjudicate Appellant's guilt. At a contested hearing on the motion, Appellant pleaded not true to each of the seventeen violations alleged by the State. At the conclusion of the hearing, the trial court found several of the allegations to be true. Based on Appellant's request for a Presentence Investigation Report (PSI), the trial court recessed the proceedings for the preparation of the PSI.

The trial court conducted a disposition hearing two months later. The hearing began with the trial court noting that "there has been an agreement or a proposal by the parties with regard to disposition or at least a recess of this matter." The prosecutor stated that the agreement "is to send the defendant to SAFPF, and upon release he will attend the batterer's program." "SAFPF" stands for a substance abuse felony punishment facility operated by the Texas Department of Criminal Justice. *See* TEX. CODE CRIM. PROC. ANN. art. 42A.303(a) (West 2018). The Code of Criminal Procedure authorizes a trial court to require a defendant to serve a term of "confinement and treatment" in SAFPF as a condition of community supervision.[1] *Id.*

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[1]According to a "Program Overview" on the website of the Texas Department of Criminal Justice:

> The Substance Abuse Felony Punishment Facility (SAFPF) / In-Prison Therapeutic Community (IPTC) provide services to qualified offenders identified as needing substance use treatment. Both are six-month in-prison treatment programs followed by up to three months of residential aftercare in a transitional treatment center* (TTC), six to nine months of outpatient aftercare and up to 12 months of support groups and follow-up supervision. A nine-month in-facility program is provided for special needs offenders who have a mental health and/or medical needs, as qualified. Offenders are sentenced to a SAFPF by a judge as a condition of community supervision in lieu of prison/state jail, or voted in by the Board of Pardons and Parole (BPP) BPP as a modification of parole.

https://www.tdcj.texas.gov/divisions/rpd/substance_abuse.html (last visited July 7, 2020).

The trial court announced that it was going to recess the disposition hearing and that, "[i]n the meantime, I'm going to modify the terms of probation for him to go to SAFPF." The trial court additionally announced that if Appellant did not "buy into the program," that it still had the findings of true to many of the violations alleged by the State and that it had the minimum sentence of confinement for twenty-five years because of the two prior felony convictions. *See* PENAL § 12.42(d) (West 2019). The trial court additionally announced that it approved the agreement.

Six weeks later, the trial court conducted another hearing. This hearing began with a statement by defense counsel to the effect that the previous agreement was that Appellant would go to SAFPF "but they have not been able to get him into SAFPF because of their regulations." Defense counsel additionally noted that "it's not [Appellant's] fault that he has not been able to get into SAFPF." Defense counsel further advised the trial court that he had checked into the possibility of Appellant attending a local Substance Abuse Treatment Facility instead of going to prison. Defense counsel concluded by stating that Appellant was "willing to go to whatever program needs to be done" in order to avoid going to prison.

In response, the trial court noted that "[w]e have now discovered that because of [Appellant's] sex offender history . . . they refused to take [Appellant]." *See* 37 TEX. ADMIN. CODE § 159.1(e) (Tex. Dep't of Criminal Justice, Substance Abuse Felony Punishment Facilities Eligibility Criteria) ("Offenders convicted of offense for which sex offender registration is required are not eligible to participate" in a substance abuse felony punishment facility program.). The trial court also noted: "We cannot do SAFPF, can't. There is no option. And that was the purpose. So, I ordered something that turned out to be undoable, impossible." The trial court further noted that the purpose of the local Substance Abuse Treatment Facility would be frustrated by permitting Appellant to attend it because it has a policy to not take sex offenders. The trial court then revoked Appellant's community supervision,

adjudicated him guilty of the charged offense, found both prior convictions to be true, and sentenced Appellant to confinement for twenty-five years.

Analysis

In his sole issue on appeal, Appellant challenges his sentence. He contends that the trial court erred when it announced that it approved the agreement and then subsequently attempted to modify it by requiring Appellant to "buy into the program." Appellant also asserts that the trial court violated his right to procedural due process by not conducting a contested hearing on the matters decided by the trial court at sentencing. Appellant also contends that the trial court erred by not enforcing the agreement.

Appellant relies upon the law governing plea bargain agreements in presenting his complaints on appeal. As explained by the Texas Court of Criminal Appeals in *Moore v. State*:

> Plea bargains are an integral part of the criminal justice system. At its core, a plea bargain is a contract between the state and the defendant. As a contract, once both parties have entered knowingly and voluntarily into a plea bargain, they are bound by the terms of that agreement once it is accepted by the judge. Plea agreements may contain a wide variety of stipulations and conditions that allow the state to tailor conditions in order to reach agreement with the defendant.
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> The only proper role of the trial court in the plea-bargain process is advising the defendant whether it will "follow or reject" the bargain between the state and the defendant. If the trial court accepts a plea-bargain agreement, the state may not withdraw its offer. If the trial court rejects the plea-bargain agreement, the defendant is, as a matter of right, allowed to withdraw his guilty plea, and the state may then withdraw its offer.
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> Only the state may offer or withdraw a plea bargain. Because a plea-bargain agreement is solely between the state and the defendant, only the state and the defendant may alter the terms of the agreement; the trial court commits error if it unilaterally adds un-negotiated terms to a plea-bargain agreement.

295 S.W.3d 329, 331–32 (Tex. Crim. App. 2009) (citations omitted). Appellant contends that, after the trial court accepted the agreed disposition, the trial court could not sentence him to prison but, rather, was required to give Appellant an alternative sentence that did not involve imprisonment.

The State contends that, under *Gutierrez v. State*, 108 S.W.3d 304 (Tex. Crim. App. 2003), the law of plea bargain agreements does not apply in the context of revocation proceedings. We agree with this reading of *Gutierrez*.

The defendant in *Gutierrez* was originally placed on community supervision. *Id.* at 305. The State later moved to revoke his community supervision. *Id.* The defendant entered into an agreement with the State whereby the defendant agreed to plead true to the alleged violations in return for the State's punishment recommendation. *Id.* The trial court revoked the defendant's community supervision, but it did not accept the State's recommendation on punishment. *Id.*

The Texas Court of Criminal Appeals rejected the defendant's claim that he had the right to withdraw his plea of true after the trial court rejected the agreed-upon punishment.[2] *Id.* at 309–10. In doing so, the court analyzed the history of plea bargain agreements. *Id.* The court noted that the right of a plea-bargaining defendant to withdraw a plea of guilty or nolo contendere if the trial court does not follow the State's recommendation of punishment is a right provided by statute. *Id.* at 309 (citing TEX. CODE CRIM. PROC. ANN. art. 26.13 (West Supp. 2019)). But "[t]his statute applies only when a defendant enters a plea of guilty or nolo contendere in a felony prosecution." *Id.* The court determined that a "plea-bargainer" in a community supervision revocation proceeding does not have a right

[2]*Gutierrez* actually involved a claim of ineffective assistance of counsel. 108 S.W.3d at 305. The defendant asserted that his trial counsel was ineffective for not seeking to withdraw his plea of true after the trial court rejected the agreed-upon punishment recommendation. *Id.* The court resolved the ineffective assistance claim by determining that the defendant did not have the right to withdraw his plea of true in the context of a community supervision revocation. *Id.* at 309–10. Thus, trial counsel was not ineffective for not seeking the withdrawal of the defendant's plea of true. *Id.* at 310.

to withdraw a plea of true if the trial court does not follow a recommended sentence. *Id.* The court stated:

> [I]n the context of revocation proceedings, the legislature has not authorized binding plea agreements, has not required the court to inquire as to the existence of a plea agreement or admonish the defendant pursuant to 26.13, and has not provided for withdrawal of a plea after sentencing.

Id. at 309–10.

Thus, under *Gutierrez*, binding plea bargain agreements do not exist in the context of revocation proceedings. *Aranda v. State*, No. 04-13-00307-CR, 2014 WL 2157537, at *3 (Tex. App.—San Antonio May 21, 2014, no pet.) (mem. op., not designated for publication); *see also Ex parte Insall*, 224 S.W.3d 213, 215 (Tex. Crim. App. 2007) (Johnson, J., dissenting) (citing *Gutierrez* for the proposition that "our precedent holds that a purported 'plea-bargain agreement' on a motion to revoke community supervision, and presumably deferred-adjudication, is not enforceable, and the trial court is free to refuse it with impunity"); *Hargesheimer v. State*, 182 S.W.3d 906, 914 (Tex. Crim. App. 2006) (Johnson, J., concurring) (citing *Gutierrez* for the proposition that "there can be no plea bargain, as no recommendation by the state is binding on a trial court during a revocation or adjudication hearing"). Even if the defendant and the State "purport to have a plea bargain" with respect to the sentence to be assessed after adjudication, the trial court is not bound by the rules that apply to plea bargains. *Ex parte Huskins*, 176 S.W.3d 818, 819 (Tex. Crim. App. 2005). "[O]nce the trial court proceeds to adjudication, it is restricted in the sentence it imposes only by the relevant statutory limits." *Id.* (quoting *Von Schounmacher v. State*, 5 S.W.3d 221, 223 (Tex. Crim. App. 1999)).

Because a defendant that enters a plea of true cannot withdraw that plea if the trial court chooses not to follow the parties' agreed disposition, we conclude that, under *Gutierrez*, a defendant who bargains for punishment at a community

supervision revocation proceeding is not entitled to specific performance of the agreed disposition if it is ultimately not upheld by the trial court. This holding is supported by the traditional role of the trial court in administering community supervision. Community supervision is a privilege, not a right. *See Flores v. State*, 904 S.W.2d 129, 130 (Tex. Crim. App. 1995). When a trial court grants community supervision, it effectively extends clemency to a defendant on the condition that the defendant abide by the rules and requirements of the supervision. *Speth v. State*, 6 S.W.3d 530, 533 (Tex. Crim. App. 1999). "[A] revocation hearing is neither a criminal nor a civil trial, but rather an administrative hearing in which the trial court is vested with broad discretionary powers." *Antwine v. State*, 268 S.W.3d 634, 637 (Tex. App.—Eastland 2008, pet. ref'd) (citing *Becker v. State*, 33 S.W.3d 64, 65–66 (Tex. App.—El Paso 2000, no pet.)).

Moreover, the agreement that Appellant reached with the State is not a plea bargain agreement in the traditional sense because he did not plead guilty in exchange for some concession from the State. *See Thomas v. State*, 516 S.W.3d 498, 502 (Tex. Crim. App. 2017) ("The contract that results from the plea bargaining process is the product of a defendant's relinquishment of his right to go to trial in exchange for a reduction in the charge and/or sentence."). Appellant and the State reached an agreement on punishment after the trial court had already found several alleged violations to be true. For these reasons, Appellant's reliance on the law of plea bargain agreements is misplaced.

On appeal from a trial court's decision to revoke community supervision, appellate courts review the record only to ensure that the trial court did not abuse its discretion. *Leonard v. State*, 385 S.W.3d 570, 576 (Tex. Crim. App. 2012); *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). The record does not show that the trial court abused its discretion by sentencing Appellant to the minimum period of confinement of twenty-five years. When a trial court proceeds

to an adjudication in a revocation proceeding, it "is restricted in the sentence it imposes only by the relevant statutory limits—regardless of any purported plea agreement or recommendation by the State." *Aranda*, 2014 WL 2157537, at *2 (citing *Von Schounmacher*, 5 S.W.3d at 223).

The agreed disposition in this case was for Appellant to go to SAFPF, a program that is imposed as a condition of community supervision. The trial court has wide discretion in selecting the terms and conditions of community supervision. *See Butler v. State*, 189 S.W.3d 299, 303 (Tex. Crim. App. 2006). The trial court's decision of whether to send Appellant to SAFPF was inherently a discretionary function of the trial court rather than the parties. We disagree with Appellant's contention that the trial court did not have authority to require Appellant to successfully complete the program. The purpose of SAFPF would be frustrated if Appellant was not required to successfully complete the program. *See Willberg v. State*, No. 03-10-00700-CR, 2011 WL 6003891, at *5 (Tex. App.—Austin Dec. 2, 2011, no pet.) (mem. op., not designated for publication).

We also disagree that the trial court was required to conduct a hearing on whether Appellant was disqualified from attending SAFPF. As noted previously, the trial court modified the terms of Appellant's community supervision to require him to attend SAFPF. The parties were back before the trial court because the entity that operates SAFPF (TDCJ) rejected Appellant for admission. Furthermore, there is evidence in the record that, because of his "sex offender history," Appellant did not meet the eligibility criteria established by TDCJ for persons to be placed in a SAFPF. *See* 37 ADMIN. § 159.1(e).

Moreover, the trial court is not bound by any agreements or recommendations in a revocation proceeding. Thus, the trial court could have simply changed its mind prior to sentencing even if Appellant was not disqualified from attending SAFPF. Because Appellant's attendance of SAFPF was a condition of community

supervision, all decisions concerning it were inherently matters for the trial court to determine in its sole discretion. *See Marriott v. State*, No. 07-02-0203-CR, 2003 WL 22004084, at *2 (Tex. App.—Amarillo Aug. 25, 2003, pet. ref'd) (mem. op., not designated for publication) (noting that the trial court is not required to honor a defendant's expressed desire to participate in SAFPF).

Finally, we disagree with Appellant's contention that the trial court was required to provide him with an alternative program that did not involve going to prison. Upon adjudicating Appellant's guilt, the trial court's only restriction relative to punishment was to impose a sentence that fell within the relevant statutory limits. *See Huskins*, 176 S.W.3d at 819.

We conclude that the trial court did not abuse its discretion by revoking Appellant's community supervision, adjudicating his guilt, and sentencing him to confinement for the minimum term of twenty-five years. We overrule Appellant's sole issue.

This Court's Ruling

We affirm the judgment of the trial court.

JOHN M. BAILEY
CHIEF JUSTICE

July 9, 2020

Publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Bailey, C.J.,
Stretcher, J., and Wright, S.C.J.[3]

Willson, J., not participating.

[3]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.