Affirmed and Opinion filed March 9, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00458-CR
NO. 14-98-00459-CR
NO. 14-98-00460-CR

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JERRY DORSEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 760,903; 773,497; and 771,991

O P I N I O N

Appellant, Jerry Dorsey, entered a plea of guilty without an agreed recommendation to three separate offenses of aggravated robbery. The trial court sentenced appellant to twenty-five years' confinement in the Texas Department of Criminal Justice - Institutional Division. In one issue for review, appellant complains his plea was not freely and voluntarily given because he was not properly admonished about the range of punishment. In particular, appellant argues that his plea was involuntary because he

failed to initial the subparagraph of the written admonishments pertaining to the range of punishment. We affirm the trial court's judgment.

In determining the voluntariness of a plea, we must review the entire record. *See Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998). A finding that a defendant was duly admonished creates a *prima facie* showing that a guilty plea was entered knowingly and voluntarily. *See id.* A defendant may still raise the claim that his plea was not voluntary; however, the burden shifts to the defendant to demonstrate that he did not fully understand the consequences of his plea such that he suffered harm. *See Ex parte Gibauitch*, 688 S.W.2d 868, 871 (Tex. Crim. App. 1985). A defendant's attestation of voluntariness at the original plea hearing imposes a heavy burden on him later to show a lack of voluntariness. *See Dusenberry v. State*, 915 S.W.2d 947, 949 (Tex. App.—Houston [1st Dist.] 1996, pet. ref'd); *Jones v. State*, 855 S.W.2d 82, 84 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd).

Article 26.13 of the Code of Criminal Procedure sets out the written admonishments the court is required to give a defendant before accepting his plea. Article 26.13(d) allows the admonishments to be given either orally or in writing. Since appellant expressly waived the right to have a court reporter transcribe the hearing on his plea of guilty, we have no record of the court orally admonishing appellant. However, the record does include the written admonishments, which were given to appellant.

The admonishments contained in the record consist of a preprinted form containing blanks for the defendant's name and the offense charged. The language of the admonishments tracks the statutory language of article 26.13. At the top of the form, the defendant is instructed, "Pursuant to Article 26.13(d), Code of Criminal Procedure, the Court admonishes you the Defendant as follows and instructs you to place your initial by each item if you understand it." The admonishments are then contained in six numbered paragraphs with a bracketed space next to each paragraph for the defendant to place his initials.

The first numbered paragraph states, "you are charged with the felony offense of *Aggravated Robbery*. . . . If convicted, you face the following range of punishment: . . . ." To complete this sentence, the admonishments then set out seventeen separate subparagraphs which detail the range of punishment

for habitual offender, first, second, and third degree felonies, state jail felonies, and class A and B misdemeanors. All of the subparagraphs have been marked through by hand except for the one explaining the punishment range for a first degree felony,[1] which had a check mark in the preprinted bracket next to it. Appellant argues that because he did not initial this subparagraph, there is no "acknowledgment of the most important admonishment of all; the range of punishment."

We disagree with appellant's contention that he was required to separately initial the range of punishment subparagraph. The seventeen range of punishment subparagraphs are subparts of paragraph one, which *was* initialed by appellant. The check mark next to the paragraph entitled "FIRST DEGREE FELONY" clearly indicates which paragraph applied to appellant's case. Thus, appellant's initials at the beginning of paragraph one is sufficient to show that he was made aware of, and properly admonished as to, the range of punishment.

In addition to the written admonishments, the record also contains appellant's Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession,[2] and the trial court's judgment.[3] Each of these documents, signed by the trial court, state that appellant was admonished of the

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[1] The range of punishment for the first degree offense of aggravated robbery is up to a $10,000 fine and between five to ninety-nine years imprisonment, or life imprisonment. *See* TEX. PEN. CODE ANN. § 29.03 (b); 12.32 (Vernon 1994).

[2] The trial court attested to the following statement in appellant's stipulation of guilt:

This document was executed by the defendant, his attorney, and the attorney representing the State, and then filed with the papers of the case. The defendant then came before me and I approved the above and the defendant entered a plea of guilty. *After I admonished the defendant of the consequences of his plea*, I ascertained that he entered it knowingly and voluntarily after discussing the case with his attorney. It appears that the defendant is mentally competent and the plea is free and voluntary. I find that the defendant's attorney is competent and has effectively represented the defendant in this case. I informed the defendant that I would not exceed the agreed recommendation as to punishment (emphasis added).

[3] The trial court's judgment included the following:

The defendant waived his right to trial by jury, and pleaded as indicated above. Thereupon, *the Defendant was admonished by the Court as required by law.* It appearing to the Court that the Defendant is mentally competent to stand trial, that the plea is freely and voluntarily made, and that the Defendant is aware of the consequences of his plea; the plea is hereby received by the Court and entered of record (emphasis added).

consequences of his plea as required by law. The plea papers signed by appellant at the plea hearing indicate he understood the consequences of his plea after consulting with his trial attorney, and that he entered his plea knowingly and voluntarily. Appellant's trial counsel and the trial court both verified in writing that appellant entered his plea voluntarily and knowingly after having fully discussed the plea and its consequences with his attorney. The transcript of the sentencing hearing further evinces that appellant was aware of the range of punishment. His trial counsel asked on direct examination, "[y]ou understand the range of punishment is from 5 to 99 or life in the penitentiary and a fine not to exceed $10,000?" Appellant replied, "yes, sir."

Appellant points to his interview in the presentence report and his *pro se* motion for a "time cut" in an attempt to show that he did not fully understand the consequences of his plea. In his interview, appellant stated that "he does not deserve fifteen years in prison" and that he thinks he should get only "five or six" years. Appellant's argument that this is proof he thought the maximum punishment was fifteen years is without merit. A guilty plea is not involuntary simply because the sentence exceeded what appellant expected. *See Reissig v. State*, 929 S.W.2d 109, 112 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd).

Appellant has failed to rebut the *prima facie* showing that his plea was knowingly and voluntarily made. We overrule appellant's sole issue for review.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed March 9, 2000.

Panel consists of Justices Yates, Frost, and Draughn.[4]

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

[4] Senior Justice Joe L. Draughn sitting by assignment.