

Affirmed and Opinion filed July 13, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00162-CR

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MELVIN LEE PRATT a/k/a MICHAEL DEMOND CHAPMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 248th District Court
Harris County, Texas
Trial Court Cause No. 794,206 & 790,073**

OPINION

Melvin Lee Pratt was charged with the felony offense of delivery of a controlled substance. Appellant entered a plea of guilty in accordance with a plea bargain. The trial court assessed punishment at three years probation. The State filed a motion to revoke appellant's probation, claiming that appellant had violated the terms and conditions of his probation. After finding the allegations in the State's motion to revoke to be true, the trial court revoked appellant's probation and assessed punishment at confinement for one year in the State Jail Division of the Texas Department of Criminal Justice. In two points of error, appellant alleges

that (1) the trial court erred in denying appellant's motion in bar of prosecution, and (2) the trial court never acquired jurisdiction over appellant. For the reasons stated below, we affirm the judgment of the trial court.

BACKGROUND

On August 11, 1998, appellant, under the name of Michael Demond Chapman, was charged in district court with the delivery of a controlled substance. Appellant claimed his date of birth as October 8, 1980, which meant he could stand trial as an adult. On August 13, 1998, appellant pleaded guilty, and the trial court placed him on three years deferred adjudication probation. Appellant's true name is Melvin Lee Pratt, and his true date of birth is November 8, 1981. At no time did appellant inform the trial court of his correct name or that he was a juvenile.

On September 3, 1998, appellant committed another offense of delivery of a controlled substance. This time, appellant gave his correct name and identified himself as a juvenile. The juvenile court certified appellant as an adult and waived its jurisdiction on September 29, 1998. The 209th District court then heard the case. On October 6, 1998, appellant plead guilty and received three years probation. The trial court made probation contingent on appellant's compliance with certain enumerated conditions. One of these conditions was that appellant would commit no offense against the laws of Texas or of the United States.

Appellant was subsequently arrested on October 23, 1998, for evading detention, an offense against the laws of Texas. Accordingly, the State filed a motion to revoke probation with the district court. Appellant now contends that the use of the offense of evading detention to revoke his probation amounted to a prosecution by the district court. As such, appellant argues that the district court was barred from revoking his probation because the juvenile court had not waived its jurisdiction with respect to the offense of evading detention. Appellant also contends that the trial court did not have jurisdiction to hear the August 1998 case because appellant was a juvenile at the time.

POINT OF ERROR ONE

By point of error one, appellant argues that the trial court erred in denying appellant's motion in bar of prosecution. Appellant claims that the juvenile court did not waive jurisdiction over the offense of evading arrest, and, therefore, the district court could not revoke probation based on that offense. We note that appellant cites no authority in support of his conclusion that a trial court cannot revoke a defendant's probation if the basis of the revocation was an offense committed while defendant was a minor. Accordingly, appellant has waived any error. *See* TEX. R. APP. P. 38.1(h); *Smith v. State*, 907 S.W.2d 522, 532 (Tex. Crim. App. 1995).

However, in the interest of justice we will exercise our discretion and address the merits of this point. A trial court retains continuing jurisdiction over a defendant's probation pursuant to TEX. CODE CRIM. PROC. ANN. art. 42.12 § 10(a) (Vernon Supp. 2000). Appellant acknowledges that the juvenile court waived its jurisdiction and that the 209th District Court had jurisdiction to hear the case. Since jurisdiction was properly with the district court, the court also had jurisdiction to revoke appellant's probation based upon appellant's commission of an offense against the laws of the State of Texas. *See, e.g., Harris v. State*, 843 S.W.2d 34, 35 (Tex. Crim. App. 1992) (trial court retains its jurisdiction to revoke probation if a motion to revoke was filed and a capias or arrest warrant issued before the probationary period expired). Appellant does not claim that the State failed to file a motion to revoke or that the State failed to issue an arrest warrant before the probationary period expired. Thus, the 209th District Court retained jurisdiction over the case. While the order revoking community supervision came from the 248th District court, jurisdiction of the case may be transferred to a court of the same rank having geographical jurisdiction where the defendant is residing or where a violation of the conditions of community supervision occurs. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 10(b) (Vernon Supp. 2000). Because we find that the district court retained jurisdiction over appellant's probation, we overrule appellant's point of error one.

POINT OF ERROR TWO

Appellant cites to *Bannister v. State*, 552 S.W.2d 124 (Tex. Crim. App. 1977) to support his position that the trial court in the first delivery case lacked jurisdiction. *Bannister* dealt with a similar fact situation to the case at bar. In *Bannister*, the defendant “played the game of ‘courts’ and won.” *Bannister*, 552 S.W.2d at 125. Using a false name, and leading her attorney and the trial court to believe she was 19 years old or older, the defendant pleaded guilty to the burglary of a habitation and received probation. At the time of revocation of probation, Bannister proved that she was 15 years old at the time of the guilty plea and was presently 18 years old. Upon review, it was held that neither the juvenile court nor the district court had jurisdiction over her in view of the Family Code provisions and section 8.07 of the 1974 Penal Code. *See id.* at 130.

However, the State correctly asserts that such a result is obviated by article 4.18 of the Code of Criminal Procedure. Article 4.18 was added to the Code of Criminal Procedure to overcome the holding in *Bannister*, which read 1974 Penal Code provisions in light of the juvenile court’s jurisdiction under the Family Code. *See Light v. State*, 993 S.W.2d 740 (Tex. App.–Austin 1999, pet. granted); Robert O. Dawson, *Texas Juvenile Law: An Analysis of Juvenile Statutory and Case Law For Texas Juvenile Justice Officials*, Ch. 3, pp. 25-27 (4th Ed. 1996); George E. Dix and Robert O. Dawson, *Criminal Practice and Procedure*, § 45.91 at 489-90 (Texas Practice 1995).

TEX. CODE CRIM. PROC. ANN. art. 4.18 (Vernon Supp. 2000) provides in part:

(a) A claim that a district court or criminal district court does not have jurisdiction over a person because jurisdiction is exclusively in the juvenile court and that the juvenile court could not waive jurisdiction under Section 8.07(a), Penal Code, or did not waive jurisdiction under Section 8.07(b), Penal Code, must be made by written motion in bar of prosecution filed with the court in which criminal charges against the person are filed.

(b) The motion must be filed and presented to the presiding judge of the court:

- (1) if the defendant enters a plea of guilty or no contest, before the plea;
- (2) if the defendant’s guilt or punishment is tried or determined by a jury, before selection of the jury begins; or

(3) if the defendant's guilt is tried by the court, before the first witness is sworn.

(c) Unless the motion is not contested, the presiding judge shall promptly conduct a hearing without a jury and rule on the motion. The party making the motion has the burden of establishing by a preponderance of the evidence those facts necessary for the motion to prevail.

(d) A person may not contest the jurisdiction of the court on the ground that the juvenile court has exclusive jurisdiction if:

(1) the person does not file a motion within the time requirements of this article; or

(2) the presiding judge finds under Subsection (c) that a motion made under this article does not prevail.

Appellant never challenged the trial court's jurisdiction under art. 4.18, but instead entered a plea of guilty. He therefore waived any challenge as to the court's jurisdiction. *See generally Miller v. State*, 981 S.W.2d 447 (Tex. App.—Texarkana 1998, pet. ref'd) (Because defendant failed to comply with the statutory requirements of article 4.18 of the Texas Code of Criminal Procedure, he did not preserve for appeal his claim that the juvenile court's waiver of jurisdiction and subsequent transfer of the case was void.). Because appellant failed to comply with the requirements of art. 4.18, he failed to preserve any complaint for appeal. We overrule point of error two and affirm the judgment of the trial court.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed July 13, 2000.
Panel consists of Justices Anderson, Frost, and Lee¹.
Do Not Publish — TEX. R. APP. P. 47.3(b).

¹ Senior Justice Norman R. Lee sitting by assignment.