

Dismissed for want of jurisdiction on December 16, 1999.



In The

Fourteenth Court of Appeals

NO. 14-98-00995-CR

JOSE ANTONIO VALTIRA, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from County Court at Law No. 1
Brazos County, Texas
Trial Court Cause No. 684-96**

OPINION

After revocation of both his deferred adjudication and straight probation, Appellant Jose Antonio Valtira (Valtira) appeals the voluntariness of his original plea to misdemeanor possession of marijuana. However, we do not have jurisdiction to hear this appeal in light of the recent opinion *Manuel v. State*, 994 S.W.2d 658 (Tex. Crim. App. 1999). Accordingly, we dismiss for want of jurisdiction.

BACKGROUND

Valtira, a Mexican citizen, pleaded guilty on July 12, 1996 to possession of less than two ounces of marijuana. Before accepting Valtira's plea to this misdemeanor offense, the trial court orally admonished all defendants in the court about immigration consequences of their pleas:

Be advised that if you are not a United States citizen and if you're found guilty of a crime, it is possible that Immigration and Naturalization can take action against you. For example, they can possibly deport you, refuse to let you back in the United States if you leave, or refuse to grant you citizenship if you apply for it.

The trial court then proceeded with the pleas of individual defendants, ultimately accepting Valtira's guilty plea, but placing him on one year's deferred adjudication.

Before he completed his year of deferred adjudication, the State of Texas (State) filed a motion to proceed with an adjudication of Valtira's guilt. The State alleged in part that Valtira had used marijuana and had committed theft by check, both violations of the provisions of his deferred adjudication. In January 1997, Valtira pleaded true to the motion, and the trial court adjudicated his guilt and sentenced him to community supervision ("probation"). In January 1998, the State moved to revoke Valtira's probation, again in part for marijuana use. Before the revocation hearing, Valtira argued that his original guilty plea had been involuntary because the trial court had inadequately admonished him about the immigration consequences of his plea. Valtira then pleaded true to the motion to revoke probation. The trial court assessed thirty days' confinement in the Brazos County jail.

JURISDICTION

The State argues, and we agree, that Valtira cannot challenge the voluntariness of his original plea through an appeal from a probation revocation. Generally, an appeal from an order revoking probation is limited to the propriety of the revocation order and does not include review of the original conviction. *Clark v. State*, 997 S.W.2d 365, 369 (Tex. App.--Dallas, no pet. h.); *Rojas v. State*, 943 S.W.2d 507, 509 (Tex. App.--Dallas 1997, no pet.). To timely appeal the original conviction and sentence, Valtira should have raised the involuntariness of his plea in an appeal after he was placed on deferred adjudication in 1996.

See Manuel v. State, 994 S.W.2d 658, 661 (Tex. Crim. App. 1999); *Clark*, 997 S.W.2d at 367; *Anthony v. State*, 962 S.W.2d 242, 246 (Tex. App.–Fort Worth 1998, no pet.).¹ He should not have delayed his appeal until after both his deferred adjudication and straight probation were revoked. Such a delay would provide three opportunities to appeal, when the law only contemplates one appeal. Thus, we dismiss this appeal for want for jurisdiction.²

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed December 16, 1999.

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

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

¹ We note that appeals similar to Valtira’s have been brought through writs of habeas corpus. *See Ex parte Tovar*, 901 S.W.2d 484 (Tex. Crim. App. 1995) (stating that the purpose of a post conviction writ of habeas corpus is to review jurisdictional defects or denials of fundamental or constitutional rights).

² If Valtira were permitted to challenge involuntariness of his plea in this appeal, he has already recognized that the Court of Criminal Appeals’ opinion in *State v. Jimenez* would control. Since Valtira briefed his appeal, *State v. Jimenez* has been handed down. 987 S.W.2d 886, 889 (Tex. Crim. App. 1999)(en banc)(holding that no state or federal constitutional due process right exists to be admonished about the immigration consequences of a misdemeanor guilty plea).

* Senior Justices Ross A. Sears, Bill Cannon, and Norman Lee sitting by assignment.