



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,018-02

IN RE JOHN YEAGER, Relator

ON APPLICATION FOR A WRIT OF MANDAMUS
CAUSE NO. C-1-CR-17-100063 IN THE COUNTY COURT AT LAW NO. TWO
FROM TRAVIS COUNTY

KEEL, J., delivered the opinion of the Court in which RICHARDSON, YEARY, NEWELL, WALKER, and SLAUGHTER, JJ., joined. HERVEY, J., filed a concurring opinion in which KELLER, P.J., and KEASLER, J., joined.

OPINION

May a defendant charged with a Class C misdemeanor elect the court for punishment in the event of a guilty verdict by a jury after a not guilty plea? Respondent, Travis County Court at Law No. 2 Judge Eric M. Shepperd, said no and issued a writ of mandamus against the Relator, City of Austin municipal court Judge John Yeager, forbidding court punishment in Travis County Class C misdemeanor cases following a jury verdict of guilty on a plea of not guilty. Judge Yeager sought mandamus relief in the court of appeals.

Having been denied relief there, he now seeks it here.

We ordered his application to be filed and set for submission to determine three issues: (1) whether the Travis County court at law has mandamus jurisdiction over the municipal court judge in this situation; (2) whether Texas Code of Criminal Procedure Article 37.07 requires juries to assess punishment in misdemeanor cases punishable by fine only on pleas of not guilty; and (3) whether Judge Shepperd has authority to order Judge Yeager or other municipal court judges to refrain from assessing punishment under these circumstances in other cases.

Since it is unclear whether Article 37.07 requires juries to assess punishment in Class C misdemeanor cases on pleas of not guilty, Judge Yeager did not have a ministerial duty to deny defendants the opportunity to elect the court for punishment in the event of a jury verdict of guilty following a plea of not guilty, and mandamus does not lie against him. Thus, even if Judge Shepperd had mandamus jurisdiction over Judge Yeager and authority to order him and other municipal court judges to carry out a clear ministerial duty, there was no such duty in this case. Consequently, we conditionally grant mandamus relief.

I. Background

The real party in interest, Roman Bledsoe, entered a not guilty plea to a Class C misdemeanor traffic violation and requested a jury trial. Before the jury was sworn in, Judge Yeager asked Bledsoe whether, in the event he was found guilty by the jury, he preferred for punishment to be assessed by the jury or by the judge. Bledsoe replied that he wanted punishment to be assessed by the judge. The State objected “to the bifurcation of

the trial” and asked Judge Yeager to follow *Stevenson v. State*, Nos. C-1-CR-12-100083, C-1-CR-12-100084, C-1-CR-12-100085 (Travis County Court at Law No. 1, Tex. May 16, 2013). Judge Yeager overruled the State’s objection and said he would assess punishment if Bledsoe was found guilty by the jury. The State requested a stay and filed a writ of mandamus to prohibit Judge Yeager from assessing punishment.

Judge Shepperd conditionally granted the State’s application, saying that Judge Yeager “lacks discretion to assess punishment in a jury trial and must instead leave punishment to the jury as a ministerial duty.” He said Judge Yeager should have followed Travis County Court at Law No. 1’s unpublished opinion in *Stevenson v. State*, which said that the jury must assess punishment in fine-only crimes, that there is no provision for the accused to make an election as to who is to assess punishment in fine-only cases, and that there is no procedure whereby the judge may intervene between the verdict and the judgment to make any decision on the punishment. Judge Shepperd said *Stevenson* was “vertical precedent” and Judge Yeager was “bound by it, and that other Austin Municipal Court judges should consider themselves bound by it.” Judge Shepperd ordered Judge Yeager to refrain from assessing punishment when the underlying cause is tried by jury.

II. Jurisdiction

Under the Government Code, “A statutory county court or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court.” TEX. GOV’T CODE § 25.0004(a). The Travis County court at law has jurisdiction to mandamus the

Austin municipal court if mandamus lies against it.

III. Mandamus Standard of Review

Mandamus lies when 1) the Relator has no other adequate legal remedy and, 2) the act sought to be compelled is purely ministerial. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013). An act is purely ministerial if the relator has a clear and indisputable right to the relief sought, i.e., when the facts and circumstances of the case dictate but one rational decision under unequivocal, well-settled, and clearly controlling legal principles. *Id.*; *In re McCann*, 422 S.W.3d 701, 704 (Tex. Crim. App. 2013).

When we are asked to issue a writ of mandamus requiring a lower court to rescind its mandamus order, we essentially undertake a *de novo* review of the lower court’s application of the two-pronged test for mandamus. *State ex rel. Young v. Sixth Judicial Dist. Court of appeals at Texarkana*, 236 S.W.3d 207, 210-11 (Tex. Crim. App. 2007).

We will conditionally grant Judge Yeager mandamus relief if he can demonstrate that 1) he has no other adequate remedy at law and, 2) under the relevant law and facts, Judge Shepperd clearly abused his discretion in issuing the writ. *State ex rel. Hill v. Court of Appeals for the Fifth Dist.*, 34 S.W.3d 924, 926 (Tex. Crim. App. 2001). The first prong is satisfied because “[t]he only remedy from an adverse ruling in an original mandamus proceeding in the court of appeals is by way of writ of mandamus to this Court.” *Id.* at 926–27. Thus, we will evaluate whether Judge Shepperd abused his discretion in issuing the writ against Judge Yeager.

IV. Construction of Code of Criminal Procedure Article 37.07

In interpreting a statute, we focus on its literal text and attempt to determine its plain meaning. *Mahaffey v. State*, 364 S.W.3d 908, 913 (Tex. Crim. App. 2012) (citing *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)). We presume that every word has been used for a purpose and give effect to each word, clause, and sentence if reasonably possible. *Liverman v. State*, 470 S.W.3d 831, 836 (Tex. Crim. App. 2015) (citing *Yazdchi v. State*, 428 S.W.3d 831, 837 (Tex. Crim. App. 2014)).

The relevant sections of Code of Criminal Procedure Article 37.07 read as follows:

Section 1

- (a) The verdict in every criminal action must be general. When there are special pleas on which a jury is to find they must say in their verdict that the allegations in such pleas are true or untrue.
- (b) If the plea is not guilty, they must find that the defendant is either guilty or not guilty, and, except as provided in Section 2, they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty.

Section 2

- (a) In all criminal cases, other than misdemeanor cases of which the justice court or municipal court has jurisdiction, which are tried before a jury on a plea of not guilty, the judge shall, before argument begins, first submit to the jury the issue of guilt or innocence of the defendant of the offense or offenses charged, without authorizing the jury to pass upon the punishment to be imposed. If the jury fails to agree on the issue of guilt or innocence, the judge shall declare a mistrial and discharge the jury, and jeopardy does not attach in the case.
- (b) Except as provided by Article 37.071 or 37.072, if a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) in any criminal action where the jury may recommend community supervision and the defendant filed his sworn motion for

community supervision before the trial began, and (2) in other cases where the defendant so elects in writing before the commencement of the voir dire examination of the jury panel, the punishment shall be assessed by the same jury, except as provided in Section 3(c) of this article and in Article 44.29. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

(c) Punishment shall be assessed on each count on which a finding of guilty has been returned.

TEX. CODE CRIM. P. ART. 37.07 §§ 1–2.

Section 1(a) establishes that “they” refers to the jury, the verdict is general, and special issues are answered “true” or “not true.”

Section 1(b) provides that on a not guilty plea, a jury must find the defendant guilty or not guilty, and in the event of a guilty verdict, except as provided by Section 2, the jury shall assess punishment in cases where there is a range of punishment.

Section 2(a) requires that juries decide guilt without reference to punishment inailable cases. In other words, bifurcation—dividing a trial into two separate phases, one for guilt and one for punishment—is required forailable offenses.

Section 2(b) specifies that if a defendant is found guilty of a non-capital crime, the judge shall assess punishment unless the defendant has elected the jury to assess punishment.

Section 2(c) requires that punishment be assessed on each count on which a finding of guilty is returned.

V. Analysis

Judge Shepperd and the State read Article 37.07 Section 2(a) as forbidding bifurcated trials in municipal courts. They say Section 2(b) is an elaboration of Section 2(a). According to them, Section 2 does not apply to municipal court cases, so Section 1(b) requires that the jury always assess punishment in municipal court. They argue that a municipal court judge has no power to bifurcate a trial or to tell a jury that its inquiry is limited to the question of guilt, so the judge cannot assess punishment.

Judge Yeager argues that he has a statutory duty under Article 37.07 Section (2)(b) to assess punishment absent a defendant's election for the jury to assess punishment. He says Judge Shepperd's order compels him to violate this statutory duty and unlawfully diminishes the rights of defendants to choose who will assess punishment. Judge Yeager says the language excluding municipal courts would have to be set out before the beginning of Section 2(a) for it to apply to each subsection, but because this limiting language is wholly contained within Section 2(a), it cannot be applied to the subsequent subsections. Judge Yeager says the State's interpretation that the municipal court exception from Section 2(a) applies to subsequent subsections would mean that municipal courts are also exempt from Section 2(c)'s requirement that punishment be assessed on each count on which a defendant has been found guilty.

Article 37.07 can be read to support both of these interpretations.

Section 1(b) says the jury shall assess punishment except as provided in Section 2. Section 2(a) says that in all criminal cases other than misdemeanor cases in municipal or justice court, the judge shall bifurcate jury trials where the defendant has pleaded not guilty.

The language “other than misdemeanor cases of which the justice or municipal court has jurisdiction” excuses a municipal court from the requirement of bifurcated jury trials on not guilty pleas but it could also be read as applying to Section 2(b) and prohibiting a municipal court from assessing punishment after a jury verdict of guilt in a Class C misdemeanor case. Judge-assessed punishment appears to be the default under Section 2(b), allowing jury assessment of punishment only if the defendant so elects. But jury-assessed punishment would be the default under Section 1(b) if Section 2(b) does not apply to misdemeanor cases under the jurisdiction of municipal or justice courts. Thus, Article 37.07 does not clearly prohibit a judge from assessing punishment after a jury verdict of guilt on a not guilty plea in a Class C misdemeanor case.

Even if Judge Shepperd agreed with the State that the phrase “other than misdemeanor cases of which the justice court or municipal court has jurisdiction” applied to Section 2(b), that interpretation of Article 37.07 was not a well-settled, unequivocal, and clearly controlling legal principle. Thus, Judge Yeager did not have a ministerial duty to refrain from assessing punishment in the event of a jury finding of guilt after a plea of not guilty, and Judge Shepperd abused his discretion in issuing a writ of mandamus against Judge Yeager.

VI. Conclusion

Judge Yeager did not have a clear ministerial duty to deny defendants in municipal court the opportunity to elect the court for punishment in the event of a jury verdict of guilty following a plea of not guilty, and mandamus did not lie against him. Because the

State did not have a clear right to prevent Judge Yeager from assessing punishment in such a case, Judge Shepperd abused his discretion in granting the State mandamus relief against Judge Yeager. Consequently, we conditionally grant Judge Yeager mandamus relief. If Judge Shepperd fails to vacate his June 12, 2018 order, the writ will issue against him.

Delivered: June 10, 2020

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