Affirmed and Memorandum Opinion filed July 21, 2020.

In The

Fourteenth Court of Appeals

NO. 14-18-00810-CR

SHACORY KEANTRE HOLDER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 344th District Court
Chambers County, Texas
Trial Court Cause No. 17DCR0239

MEMORANDUM OPINION

Appellant Shacory Keantre Holder appeals his conviction for possession of methamphetamine with intent to deliver. In two issues appellant argues the trial court erred in (1) denying appellant's motion for new trial based on an involuntary guilty plea; and (2) assessing punishment at 20 years in prison. Concluding appellant has not shown his plea was involuntary or that his sentence was grossly disproportionate to the offense, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Plea Hearing

Appellant was indicted for possession with intent to deliver more than 400 grams of methamphetamine. *See* Tex. Health & Safety Code Ann. § 481.112. Appellant entered an open guilty plea to the charge. Before entering his plea appellant was given the panoply of written admonishments required by article 26.13 of the Code of Criminal Procedure. The written admonishments informed appellant that he faced a punishment range of 15 to 99 years in prison. Appellant signed those admonishments and stated in open court that he reviewed them with his attorney and understood them.

The trial court orally admonished appellant as to the range of punishment and appellant acknowledged that he understood. The trial court explained that a presentence investigation report (PSI) would be ordered and that appellant would be facing the entire range of punishment upon his plea of guilty. The trial court again asked appellant if he still wanted to plead guilty, and appellant responded that he did. Appellant averred that he understood the consequences of his guilty plea and was mentally competent to enter into a plea. The trial court asked appellant whether he understood his right to a jury trial and was willing to give up that right, and appellant responded affirmatively. Appellant understood that he did not have a plea bargain agreement and that a PSI would be prepared.

When appellant entered his plea, he averred that he was pleading guilty because he was guilty and for no other reason, no one coerced him, and he was pleading guilty freely and voluntarily. The trial court accepted appellant's plea and recessed for preparation of the PSI.

II. Sentencing Hearing

At the beginning of the sentencing hearing the State introduced the PSI and the trial court admitted it without objection from appellant. The PSI contains the arresting officer and appellant's version of events leading to appellant's arrest, information about appellant's personal history, education, family and employment history, finances, prior record, and future plans and goals.

According to the arresting officer, Corporal Jacobs of the Texas Department of Public Safety, appellant was arrested after Jacobs stopped the car appellant was driving for failure to signal while changing lanes. Appellant's co-defendant, Brandon Andre Williams, was a passenger in the car. Jacobs questioned appellant and Williams about their travel through Texas and observed that appellant appeared nervous. Because appellant and Williams gave conflicting accounts of their reason for travel, Jacobs requested consent to search. Williams denied Jacobs' request and Jacobs requested assistance from a K9 unit. After the dog with the K9 unit alerted, officers found 1078 grams of methamphetamine.

Appellant told a different story to the PSI investigator. Appellant told the investigator he had driven from Mississippi to Houston to pick up a car for Williams and drive it back to Mississippi. Williams was appellant's barber school instructor. Appellant denied any knowledge of drugs in the car until they were discovered by the officers during the traffic stop.

Appellant testified that he had not been previously convicted of a felony and had no other criminal history. Appellant asked the trial court to grant deferred adjudication community supervision and testified that he understood if he was placed on community supervision and violated the conditions of supervision, he would be subject to the full range of punishment. Appellant testified that he had a job at a barber shop and had two children to support.

Appellant explained that he pleaded guilty "to get out of this as soon as possible" and to fight for custody of his daughter. Appellant continued to deny knowledge of the drugs in the car and testified that his mistake was in trusting Williams. Appellant testified that the only thing he accepted responsibility for was "being there in a bad situation at the wrong time and trusting the wrong person." On cross-examination appellant maintained his innocence and claimed Williams was the person who was trafficking drugs.

At the end of the sentencing hearing the trial court sentenced appellant to twenty years in prison. Appellant did not object to the trial court's assessment of punishment at that time.

III. Motion for New Trial

Appellant filed a motion for new trial that was later amended. In the amended motion appellant alleged as grounds for new trial (1) his guilty plea was rendered involuntary by new "material information" in the form of the pending federal indictment against him for the same arrest; and (2) his sentence was grossly disproportionate to the offense committed and violated the Eighth Amendment protection against cruel and unusual punishment.

A. Involuntary Plea

Appellant argued that his guilty plea was involuntary because after appellant was sentenced, he learned he was under federal indictment. Appellant argued he did not know this information at the time he pleaded guilty and that the State's failure to disclose the information violated article 39.14(h) of the Code of Criminal Procedure. As evidence in support of a new trial based on his involuntary plea appellant attached to the motion a copy of the federal indictment filed July 25, 2018, two weeks after appellant entered his guilty plea, but two months before his

sentencing hearing. The indictment charged Williams, appellant, and a third party with possession of methamphetamine with intent to distribute. Appellant also attached an affidavit from his trial attorney in which the attorney averred that he did not know about the pending federal indictment until after he advised appellant to plead guilty to the state charge. The attorney stated that he would not have advised appellant to plead guilty but would have contacted "the Federal Agency" and would have sought a plea bargain agreement with the State prosecutor in exchange for cooperation with federal authorities. Appellant also signed an affidavit stating that if he had known of the federal investigation, he would have offered cooperation and would not have pleaded guilty without an agreed recommendation on punishment from the prosecutor.

B. Excessive Punishment

Appellant also argued that his twenty-year sentence was grossly disproportionate to the offense committed and violated the Eighth Amendment protection against cruel and unusual punishment. In support of this issue appellant attached judgments and sentences of other offenders who received lesser punishments for similar offenses.

The trial court did not hold a hearing on appellant's motion for new trial and did not expressly rule on the motion. Appellant's motion for new trial was overruled by operation of law 75 days after it was filed. *See* Tex. R. App. P. 21.8(c).

ANALYSIS

I. Standard of Review

An appellate court reviews a trial court's denial of a motion for new trial for an abuse of discretion, reversing only if no reasonable view of the record could support the trial court's ruling. *Burch v. State*, 541 S.W.3d 816, 820 (Tex. Crim.

App. 2017). This is a deferential standard of review that requires appellate courts to view the evidence in the light most favorable to the trial court's ruling. *Id*. In applying this standard of review, we must presume that the trial court disbelieved evidence supporting appellant's claims. *See id*. at 821. In determining whether the trial court abused its discretion, an appellate court must not substitute its own judgment for that of the trial court, and it must uphold the trial court's ruling if it is within the zone of reasonable disagreement. *Id*. at 820.

II. Appellant's plea was not rendered involuntary by the State's failure to disclose mitigating information pursuant to article 39.14(h) of the Texas Code of Criminal Procedure.

In his first issue appellant argues the trial court erred in failing to grant his motion for new trial on the grounds that the State failed to disclose that appellant and his co-defendant were the target of an ongoing federal investigation and subsequent federal indictment for the same underlying offense. The State responds arguing that appellant's federal indictment was subsequently dismissed, and that appellant can no longer complain that his plea was involuntary. We need not address the State's argument that the later dismissal of the federal indictment could affect the voluntariness of appellant's plea because, for the reasons stated below, we hold appellant's plea was not rendered involuntary by the State's failure to disclose this information.

A guilty plea is valid when it "represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *State v. Guerrero*, 400 S.W.3d 576, 588 (Tex. Crim. App. 2013) (citing *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). A guilty plea does not violate due process even when a defendant enters it while "operating under various misapprehensions about the nature or strength of the State's case against him." *Ex Parte Palmberg*, 491 S.W.3d

804, 807 (Tex. Crim. App. 2016). When a "defendant waives his state court remedies and admits his guilt, he . . . assumes the risk of ordinary error in either his or his attorney's assessment of the law and facts." *Id*. at 808 (quoting *McMann v. Richardson*, 397 U.S. 759, 774 (1970)).

The voluntariness of a defendant's guilty plea is not contingent on his awareness of the full dimension of the State's case. *Palmberg*, 491 S.W.3d at 809. "While any defendant who is deciding whether or not to plead guilty would certainly prefer to be apprised of his exact odds of an acquittal at trial, the reality is that every defendant who enters a guilty plea does so with a proverbial roll of the dice." *Id.* The more information a defendant acquires beforehand about the State's case, the better informed his decision to plead guilty will be, providing him the opportunity to make a "wise" plea. *United States v. Ruiz*, 536 U.S. 622, 629 (2002). But even if the defendant is less well-informed, as long as he has a sufficient awareness of his circumstances—including an awareness that some facts simply remain unknown to him or are undetermined as of the time of the plea—his "potentially unwise" plea is still a voluntary one. *Palmberg*, 491 S.W.3d at 809.

Before accepting a guilty plea, the trial court must give the defendant certain admonishments in part to ensure that the plea is voluntary. *See* Tex. Code Crim. Proc. Ann. art. 26.13. If the trial court gives these admonishments, as the court did here, a prima facie showing exists that the defendant pleaded guilty voluntarily. *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998). The burden then shifts to the defendant to prove that "he did not fully understand the consequences of his plea such that he suffered harm." *Id*. If the defendant "attests during the initial plea hearing that his plea is voluntary," the defendant has a "heavy burden" on appeal to prove that his plea was involuntary. *Houston v. State*, 201 S.W.3d 212, 217 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

In his motion for new trial appellant argued the information about the pending federal investigation was information required to be disclosed pursuant to article 39.14 of the Code of Criminal Procedure (requiring the State to disclose "any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged").

Article 39.14 requires the State, upon request, to disclose to the defendant discoverable items that "constitute or contain evidence material to any matter involved in the action" subject to certain statutory limitations. *See* Tex. Code Crim. Proc. art. 39.14(a); *Glover v. State*, 496 S.W.3d 812, 815 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd). If the State has not received a request, it only has an affirmative duty to disclose "any exculpatory, impeachment, or mitigating document, item, or information" in its possession, custody, or control "that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged." *See* Tex. Code Crim. Proc. art. 39.14(h); *Glover*, 496 S.W.3d at 815.

Appellant's first issue rests on the argument that the information about the federal indictment was mitigating evidence "in the possession, custody, or control of the state," and the failure to disclose that information rendered his plea involuntary. Although appellant attached a copy of the indictment filed in the United States District Court for the Southern District of Mississippi, nothing in the appellate record suggests that the State in this case had knowledge of the indictment or the federal investigation that was pending at the time appellant entered his plea. The State does not challenge this assumption, however, and for the sake of argument, we will presume the State had in its possession the information about the federal investigation and will address whether the suppression of such information was

material.

For evidence that was presumably suppressed by the State to be considered material, there must be a reasonable probability that the result of the trial would have been different if the suppressed evidence had been disclosed to the defense. *Strickler v. Greene*, 527 U.S. 263, 281–82, 289 (1999); *see United States v. Bagley*, 473 U.S. 667, 682 (1985) (declaring that favorable evidence is material and that constitutional error results from its suppression by the government if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different); *see also Brady v. Maryland*, 373 U.S. 83, 87 (1963) (suppression of material evidence violates due process).

Appellant argues that he would have sought a plea bargain agreement with the State and his chances of success would have been improved by cooperation with federal authorities. As noted by the United States Supreme Court and the Texas Court of Criminal Appeals, a defendant's plea is not involuntary merely because he does not have complete knowledge of every relevant circumstance of the case. *Ruiz*, 536 U.S. at 629; *Palmberg*, 491 S.W.3d at 809. In this case, despite pleading guilty, appellant maintained his innocence both during the PSI investigation and during the sentencing hearing. Appellant did not admit culpability and did not seek to cooperate with any State investigation into his co-defendant. Even if the State had knowledge of the federal investigation it was not required to disclose that information before appellant pleaded guilty and, as a result, appellant cannot show his plea was involuntary on that basis. *See Allen v. State*, 473 S.W.3d 426, 457 (Tex. App.—Houston [14th Dist.] 2015) (speculation about the existence, contents, favorability and usefulness of offense reports does not establish materiality), *pet. dism'd*, 517 S.W.3d 111 (Tex. Crim. App. 2017).

On appeal appellant argues he was not "adequately advised of the direct

consequences of entering a plea of guilty in this case, specifically that it would be used against him in a pending federal case for the same offense, and he was deprived the opportunity to mitigate guilt." Appellant analogizes his circumstances to those of the defendants in *Padilla v. Kentucky*, 559 U.S. 356 (2010) and *Aguilar v. State*, 537 S.W.3d 122, 127 (Tex. Crim. App. 2017).

Both *Padilla* and *Aguilar* address claims of ineffective assistance of counsel when defense counsel failed to advise the defendant of the immigration consequences of a guilty plea. *See Padilla*, 559 U.S. at 369; *Aguilar*, 537 S.W.3d at 126. In this case, however, appellant did not raise an ineffective assistance of counsel claim, nor did appellant raise an issue with regard to any potential punishment in federal court. In appellant's motion for new trial he complained that his plea was rendered involuntary by the State's failure to disclose material information pursuant to article 39.14. Because we hold the result of appellant's trial would not have been different if the information was disclosed, we overrule appellant's first issue.

II. Appellant's twenty-year sentence did not violate the Eighth Amendment prohibition against cruel and unusual punishment.

In appellant's second issue he argues the trial court erred in sentencing appellant to twenty years' confinement because the sentence is grossly disproportionate when considered in light of other sentences for the same offense as well as the facts and circumstances that constituted the offense.

The Eighth Amendment prohibits cruel and unusual punishment, which includes "extreme sentences that are grossly disproportionate to the crime." *Graham v. Florida*, 560 U.S. 48, 60 (2010). Appellant pleaded guilty to possession with intent to deliver more than 400 grams of methamphetamine, which is punishable by confinement for 15 to 99 years in prison. *See* Tex. Health & Safety Code Ann. § 481.112. Subject only to "a very limited, exceedingly rare" exception for grossly

disproportional punishments, a punishment assessed within the statutory limits is "unassailable on appeal." *Ex parte Chavez*, 213 S.W.3d 320, 323–24 (Tex. Crim. App. 2006); *see also Lockyer v. Andrade*, 538 U.S. 63, 73 (2003) (noting with regard to noncapital crimes, the gross disproportionality principle applies only in the "exceedingly rare" and "extreme" case). Legislatures have the broad authority to define their own crimes and set their own punishments. *Solem v. Helm*, 463 U.S. 277, 290 (1983). As a reviewing court, we must afford considerable deference to these sentencing schemes. *Id*. Therefore, in assessing the proportionality for a term-of-years sentence, our role is to judge not the wisdom of appellant's sentence, but whether the sentence comports with constitutional standards. *See id*.

We first determine whether "an objective comparison of the gravity of the offense against the severity of the sentence reveals the sentence to be extreme." *Baldridge v. State*, 77 S.W.3d 890, 893 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd) (citing *Harmelin v. Michigan*, 501 U.S. 957, 1005 (1991)). Only if we are able to infer that the sentence is grossly disproportionate will we then compare the challenged sentence against the sentences of other offenders in the same jurisdiction and the sentences imposed for the same crime in other jurisdictions. *Id*.; *see also Solem*, 463 U.S. at 292.

Appellant argues that his sentence is grossly disproportionate because it was in excess of the statutory minimum, he was convicted of a non-violent drug offense, and no one was harmed during the commission of the offense. We do not agree that this is the "exceedingly rare" case in which appellant's sentence would give rise to an inference of gross disproportionality. Appellant's sentence of twenty years is not so extreme as to satisfy the disproportionality prong of the *Solem* test. Appellant's sentence is toward the low end of the range of punishment and was a result of his involvement in trafficking more than 1000 grams of methamphetamine on an

interstate highway. Possession with intent to deliver such a large amount of illegal drugs is a serious offense. *Compare Alvarez v. State*, 525 S.W.3d 890, 893 (Tex. App.—Eastland 2017, pet. ref'd) (forty-year sentence not disproportionate for possession with intent to deliver 42 grams of methamphetamine); *Sneed v. State*, 406 S.W.3d 638, 643 (Tex. App.—Eastland 2013, no pet.) ("Possession of over six grams of cocaine with the intent to deliver is a serious offense."); *Smith v. State*, 256 S.W.3d 341, 344 (Tex. App.—San Antonio 2007, no pet.) (25-year sentence for manufacturing and distribution of methamphetamine not grossly disproportionate).

Because our comparison of appellant's crime to his sentence does not give rise to an inference of gross disproportionality, we do not compare appellant's sentence with the sentences of other offenders in the same jurisdiction or with the sentences imposed for the same crime in other jurisdictions. *See Baldridge*, 77 S.W.3d at 893. We conclude appellant's sentence did not violate federal constitutional standards and overrule appellant's second issue.

CONCLUSION

Having overruled appellant's issues challenging the voluntariness of his plea and the constitutionality of his sentence we affirm the trial court's judgment.

/s/ Jerry Zimmerer
Justice

Panel consists of Justices Jewell, Bourliot, and Zimmerer (Bourliot, J. dissenting opinion to follow).

Do Not Publish — Tex. R. App. P. 47.2(b).