



In The
Eleventh Court of Appeals

No. 11-15-00151-CR

CHARLOTTE NAOMI SHILOH, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 35th District Court
Brown County, Texas
Trial Court Cause No. CR22639**

MEMORANDUM OPINION

Charlotte Naomi Shiloh appeals from a judgment adjudicating her guilt for the offense of assault on a public servant. In a single issue on appeal, Appellant contends that the trial court erred in failing to provide her at least forty-eight hours to review the presentence investigation report prior to sentencing. We modify and affirm.

Background Facts

Appellant entered a guilty plea in December 2013 for the third-degree felony offense of assault on a public servant. *See* TEX. PENAL CODE ANN. § 22.01 (West

Supp. 2016). The trial court deferred a finding of guilt and placed her on deferred adjudication community supervision for a term of four years. In September 2014, the State filed a motion to adjudicate guilt and revoke community supervision based upon nine alleged violations of the terms and conditions of her community supervision.

The trial court heard the motion to adjudicate in March 2015. Appellant pleaded true to all of the allegations in the State's motion to adjudicate, and the trial court found all of the alleged violations to be true.

In April 2015, the trial court held the sentencing hearing. At the beginning of the hearing, Appellant asked the trial court to waive the preparation of a presentence investigation (PSI) report. Appellant and her boyfriend testified on her behalf at the sentencing hearing. At the conclusion of the evidence, the trial court ordered that a PSI report be completed and ordered a recess. During a one-hour recess, the community supervision department prepared a PSI report. After the recess, Appellant's trial counsel told the trial court that he had reviewed the PSI report. Counsel did not advise the trial court of any errors in the PSI report, and he did not request any additional time to review it. The trial court subsequently sentenced Appellant to six years in the Institutional Division of the Texas Department of Criminal Justice.

Analysis

Appellant asserts that the trial court did not comply with Article 42.12, section 9 of the Code of Criminal Procedure because trial counsel did not receive the PSI report at least forty-eight hours prior to Appellant's sentencing. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 9(d) (West Supp. 2016). In advancing this argument, Appellant does not allege that the PSI report contained any erroneous information, and she does not identify any particular harm that she suffered by not having forty-eight hours to review the report.

As noted above, Appellant received the PSI report on the same day that the trial court sentenced Appellant. Therefore, the trial court did not abide by the forty-eight hour review requirement. However, Appellant did not object to the trial court's decision to proceed with sentencing less than forty-eight hours after the PSI report was prepared. Thus, Appellant failed to preserve the error that she complains about on appeal. *Evans v. State*, No. 11-09-00341-CR, 2011 WL 5994429, at *6 (Tex. App.—Eastland Nov. 30, 2011, pet. ref'd) (mem. op., not designated for publication) (failing to object at trial waived the defendant's right to review a PSI report forty-eight hours before sentencing); *see Wright v. State*, 873 S.W.2d 77, 82–83 (Tex. App.—Dallas 1994, pet. ref'd) (A defendant forfeits his Article 42.12, section 9(d) right to forty-eight hours to review a PSI report if he fails to insist upon it by objection, request, motion, or some other behavior calculated to exercise the right.).

Additionally, Appellant does not complain about any harm that she suffered as a result of not having forty-eight hours to review the PSI report. We held in *Evans* that a complaint of insufficient time under Article 42.12, section 9(d) to review a PSI report is subject to a harm analysis. 2011 WL 5994429, at *7; *see* CRIM. PROC. art. 42.12, § 9(e) (“The judge shall allow the defendant or his attorney to comment on a presentence investigation or a postsentence report and, with the approval of the judge, introduce testimony or other information alleging a factual inaccuracy in the investigation or report.”); *see also Wyatt v. State*, No. 14-10-00714-CR, 2011 WL 2566359, at *3 (Tex. App.—Houston [14th Dist.] June 30, 2011, no pet.) (mem. op., not designated for publication). Thus, even if Appellant had preserved a complaint about the lack of time to review the PSI report, she has not made a showing of any harm that she suffered as a result of the lack of notice. Accordingly, we overrule Appellant's sole issue.

However, upon this court's review of the record, we have determined that the judgment contains a nonreversible error and should be modified. The judgment

reflects that a fine of \$1,000 was imposed. When the trial court adjudicated Appellant's guilt, assessed her punishment, and orally pronounced the sentence in open court, the trial court did not mention a fine. The trial court was required to pronounce the sentence in Appellant's presence. *See* CRIM. PROC. art. 42.03; *Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004). When there is a variation between the oral pronouncement of sentence and the written judgment, the oral pronouncement controls. *Coffey v. State*, 979 S.W.2d 326, 328–29 (Tex. Crim. App. 1998); *see also Taylor*, 131 S.W.3d at 500–02 (explaining the distinction between regular community supervision, in which sentence is imposed but suspended when a defendant is placed on community supervision, and deferred-adjudication community supervision, in which the adjudication of guilt and the imposition of sentence are deferred). Because the trial court did not mention any fine when it orally pronounced Appellant's sentence and because we have the necessary information for reformation, we modify the trial court's judgment to delete the fine. *See Taylor*, 131 S.W.3d at 502.

This Court's Ruling

We modify the judgment of the trial court to delete the \$1,000 fine. As modified, we affirm the judgment of the trial court.

JOHN M. BAILEY
JUSTICE

June 22, 2017

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.