Affirmed and Memorandum Opinion filed May 6, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-00609-CR

DAMON TYRONE JACKSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 3rd District Court
Anderson County, Texas
Trial Court Cause No. 28, 282

MEMORANDUM OPINION

Appellant Damon Tyrone Jackson appeals the trial court's order adjudicating his guilt and sentencing him to two years' confinement for the offense of credit card abuse. In two issues, appellant contends (1) the punishment assessed is not supported by sufficient evidence, and (2) the trial court did not have jurisdiction to adjudicate appellant's guilt. We affirm.

I. Factual and Procedural Background

Appellant was charged by indictment for the offense of credit card abuse. He entered a plea of "guilty" and received two years' deferred adjudication probation. Appellant entered his plea in the 3rd Judicial District Court in Anderson County, Judge Deborah Oakes Evans presiding. The State subsequently filed a motion to adjudicate appellant's guilt alleging, among other things, that appellant violated his probation by committing another offense against the State by fleeing from a peace officer. A hearing was held in the 3rd Judicial District Court over which Judge Bascom Bentley presided.

In support of its motion, the State presented evidence that appellant fled from Ronnie Holcomb, the warrant officer for Anderson County. Officer Holcomb testified that he had a warrant for appellant's arrest and met appellant at the adult probation office. Appellant told Officer Holcomb that he would surrender willingly, but needed to make a phone call. After appellant finished his phone call, he left the building and ran down the street. Officer Holcomb chased appellant and arrested him. Judge Bentley found that appellant violated the conditions of his probation by committing the offense of flight from a peace officer. Judge Bentley made no further findings as to the State's additional allegations, and assessed appellant's punishment at two years' confinement in the State Jail Division of the Texas Department of Criminal Justice.

II. Issues and Analysis

A. Did the presiding judge have jurisdiction to hear the motion to adjudicate?

In his second issue, appellant contends the trial judge who heard the motion to adjudicate did not have jurisdiction because he was not the same judge who ordered the deferred adjudication. Appellant alleges that Judge Bentley did not have jurisdiction to adjudicate guilt because Judge Evans signed the original deferred adjudication order. Appellant relies on section 10 of article 42.12 of the Code of Criminal Procedure, which provides:

> Sec. 10. (a) Only the court in which the defendant was tried may grant community supervision, impose conditions, revoke the community supervision, or discharge the defendant, unless the judge has transferred jurisdiction of the case to another court with the latter's consent. Except as provided by Subsection (d) of this section, only the judge may alter conditions of community supervision. In a felony case, only the judge who originally sentenced the defendant may suspend execution thereof and place the defendant under community supervision pursuant to Section 6 of this article. If the judge who originally sentenced the defendant is deceased or disabled or if the office is vacant and the judge who originally sentenced the defendant is deceased or disabled or if the office is vacant and a motion is filed in accordance with Section 6 of this article, the clerk of the court shall promptly forward a copy of the motion to the presiding judge of the administrative judicial district for that court, who may deny the motion without a hearing or appoint a judge to hold a hearing on the motion.

TEX. CODE CRIM. PROC. ANN. art. 42.12 (Vernon Supp. 2009).

Appellant argues that because there is no formal exchange of bench agreement between Judge Evans and Judge Bentley, the court had no jurisdiction to adjudicate his guilt. The Texas Constitution states in part that "the district judges may exchange districts, or hold courts for each other when they deem it expedient, and shall do so when required by law." TEX. CONST. art. V, § 11. Section 24.303 of the Government Code states that the judges of district courts in counties in which there are two or more district courts "may, in their discretion, exchange benches or districts from time to time." TEX. GOV'T CODE ANN. § 24.303(a) (Vernon 2004). Furthermore, the Court of Criminal Appeals has held it is not necessary that a formal order be entered for the judge of one district court to preside over a case in place of a duly elected judge. *Davila v. State*, 651 S.W.2d 797, 799 (Tex. Crim. App. 1983).

In this case, the court in which appellant entered his "guilty" plea was the 3rd Judicial District Court of Anderson County.[1] At the time probation was imposed, Judge

[1] The 3rd Judicial District is composed of Anderson, Henderson, and Houston Counties. TEX. GOV'T CODE ANN. § 24.103 (Vernon 2004).

Evans, presiding judge of the 87th Judicial District Court,[2] presided over that court. Through an exchange of benches, Judge Bentley, judge of the 369th Judicial District Court,[3] presided over the 3rd Judicial District Court at the time appellant's probation was revoked and his guilt adjudicated. Contrary to appellant's assertion, there is no need for a formal order to record the exchange of benches. Moreover, the exchange does not prohibit Judge Bentley from revoking appellant's probation. As a district judge with concurrent jurisdiction in Anderson County, Judge Bentley had jurisdiction to sit as a judge of the 3rd Judicial District without obtaining a formal order to do so. *See Davila v. State*, 794 S.W.2d 518, 520 (Tex. App.—Corpus Christi 1990, no pet.) (judge of revoking court, under exchange of benches, would be deemed as sitting as judge of imposing court). Therefore, Judge Bentley had jurisdiction to adjudicate appellant's guilt. Appellant's second issue is overruled.

B. Did the trial court err in assessing punishment?

In his first issue, appellant contends the trial court abused its discretion in sentencing him to two years in prison. Our review of the trial court's order revoking probation is limited to determining whether the trial court abused its discretion. *Caddell v. State*, 605 S.W.2d 275, 277 (Tex. Crim. App. 1980).

On appeal, appellant contends that the punishment he received was cruel and unusual due to the compelling lack of evidence of malice, threat, violence, or other typical aggravating factor. Appellant, however, failed to object to the trial court's assessment of punishment at the adjudication hearing.

The Eighth Amendment to the United States Constitution requires that a criminal sentence be proportionate to the crime for which a defendant has been convicted. *Solem v.*

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[2] The 87th Judicial District is composed of Anderson, Freestone, Leon, and Limestone Counties. TEX. GOV'T CODE ANN. § 24.189 (Vernon 2004).

[3] The 369th Judicial District is composed of Anderson and Cherokee Counties. TEX. GOV'T CODE ANN. § 24.514 (Vernon 2004).

Helm, 463 U.S. 277, 290 (1983). To preserve for appellate review a complaint that a sentence is grossly disproportionate constituting cruel and unusual punishment, a defendant must present to the trial court a timely request, objection, or motion stating specific grounds for the ruling desired. TEX. R. APP. P. 33.1(a); *Rhoades v. State*, 934 S.W.2d 113, 120 (Tex. Crim. App. 1996). Therefore, by failing to object to the two-year sentence, appellant waived his claim that the sentence was cruel and unusual. Appellant's first issue is overruled.

The judgment of the trial court is affirmed.

/s/ Kem Thompson Frost
Justice

Panel consists of Justices Frost, Boyce, and Sullivan.

Do Not Publish — TEX. R. APP. P. 47.2(b).