

Affirmed and Opinion filed April 22, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00573-CR

KEVIN RAY CHERRY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 248th District Court
Harris County, Texas
Trial Court Cause No. 1186055**

MEMORANDUM OPINION

After a guilty plea, appellant was convicted of the offense of theft. On June 19, 2009, the trial court sentenced appellant to confinement for twenty years in the Institutional Division of the Texas Department of Criminal Justice. In his sole issue on appeal, appellant claims the evidence was insufficient to support his conviction¹.

Over a two-year period, appellant diverted payments made to his employer into his bank account. There were seven such transfers and the total amount was more than \$330,000. Appellant does not dispute the evidence sufficiently establishes the seven

¹ Although appellant's brief presents two points of error, there is only one issue argued, the legal sufficiency of the evidence to support the conviction.

transfers which cumulate to an amount of more than \$200,000. Rather, appellant argues the State failed to prove the theft was pursuant to one scheme and continuing course of conduct and therefore did not establish theft in an amount of more than \$200,000.

Citing *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), appellant challenges the legal sufficiency of the evidence to support his conviction. However, the *Jackson* standard does not apply when a defendant knowingly, intelligently and voluntarily enters a plea of guilty. See *Ex Parte Williams*, 703 S.W.2d 682-83 (Tex. Crim. App. 1986). On appeal from a felony guilty plea to the court, our review is limited to determining whether sufficient evidence supports the judgment under article 1.15 of the Code of Criminal Procedure. *Id.* at 678; see also Tex. Crim. Proc. Code Ann. art. 1.15 (Vernon 2005).

Under article 1.15, the State is required to introduce sufficient evidence to support the judgment. Tex. Crim. Proc. Code Ann. art. 1.15; see also *Ex Parte Williams*, 703 S.W.2d at 678. In this case, the record contains a "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession." Appellant's stipulation of guilt and judicial confession admits to committing theft of property valued over \$200,000 "pursuant to one scheme and continuing course of conduct." A judicial confession will sustain a conviction upon a guilty plea even if the defendant does nothing more than affirm the indictment's allegations are true and correct. See *Tabora v. State*, 14 S.W.3d 332, 337-38 (Tex. App. -- Houston [14th Dist.] 2000, no pet.). Appellant's judicial confession is sufficient evidence to support the conviction. See *Keller v. State*, 125 S.W.3d 600, 605 (Tex. App. -- Houston [1st Dist.] 2003, pet. dism'd).

Accordingly, we overrule appellant's issue and affirm the trial court's judgment.

PER CURIAM

Panel consists of Justices Brown, Sullivan, and Christopher.

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