

Affirmed and Memorandum Opinion filed November 2, 2023



In The

Fourteenth Court of Appeals

NO. 14-22-00901-CR

ESTANISLADO ALVAREZ-HERNANDEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 338th District Court
Harris County, Texas
Trial Court Cause No. 1616060**

MEMORANDUM OPINION

Estanislado Alvarez-Hernandez appeals his conviction of super-aggravated sexual assault of a child. His sole issue on appeal alleges that trial counsel violated *McCoy v. Louisiana*, which prohibits defense counsel from conceding guilt over a defendant's objection to maintain his innocence. 138 S. Ct. 1500, 1509 (2018). The *Turner* court addressed, inter alia, whether the defendant had preserved error on his *McCoy* complaint. *Turner v. State*, 570 S.W.3d 250, 275–76 (Tex. Crim. App. 2018). Although a defendant is not expected to object with the precision of an attorney, the

court held that a defendant cannot remain silent before and during trial and raise a *McCoy* complaint for the first time after trial. *Id.* at 276. *But see Harrison v. State*, 595 S.W.3d 879, 885 (Tex. App.—Houston [14th Dist.] 2020, pet. ref’d) (concluding that the defendant preserved error on her *McCoy* complaint by filing a motion for new trial at the first opportunity after learning about the trial court’s statement that deferred adjudication would not be considered). To preserve a *McCoy* complaint, a defendant must present “express statements of [his] will to maintain innocence.” *Turner*, 570 S.W.3d at 276.

Appellant acknowledges that he did not object to his trial counsel’s statements at trial. Likewise, the record does not indicate that appellant otherwise presented “express statements of [his] will to maintain innocence.” *Id.* Thus, appellant forfeited any error by failing to timely object. *Id.*; *see also* Tex. R. App. P. 33.1. Accordingly, appellant waived his sole issue on appeal. We overrule his sole issue and affirm the trial court’s judgment.

/s/ Frances Bourliot
Justice

Panel consists of Chief Justice Christopher and Justices Bourliot and Hassan.
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