In The

Court of Appeals

Ninth District of Texas at Beaumont

_____

NO. 09-08-00469-CR

_____

AHMAD JAMAL ACROND a/k/a AHMAD JAMAL ACHROND, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 97589

MEMORANDUM OPINION

Pursuant to a plea bargain agreement, appellant Ahmad Jamal Acrond a/k/a Ahmad Jamal Achrond pled guilty to assault on a family member in trial cause number 97589. The trial court found the evidence sufficient to find Acrond guilty, but deferred further proceedings, placed Acrond on community supervision for five years, and assessed a fine of $500. The State subsequently filed a motion to revoke Acrond's unadjudicated community supervision. Acrond pled "true" to five violations of the conditions of his community

supervision. The trial court found that Acrond violated the conditions of his community supervision, found Acrond guilty of assault on a family member, and assessed punishment at twenty years of confinement. The trial court ordered that Acrond's sentence was to run consecutively to his sentence in another case (trial cause number 97334) in which Acrond pled guilty to assault on a family member and was adjudicated guilty following revocation of his community supervision.[1] In his sole appellate issue, Acrond argues that this case was prosecuted in a single criminal action with cause number 97334, and that because both cases arose from a single criminal episode, the trial court was prohibited from ordering his sentence to run consecutively to his sentence in cause number 97334. *See* TEX. PEN. CODE ANN. § 3.03 (Vernon Supp. 2008). We affirm the trial court's judgment.

Section 42.08 of the Code of Criminal Procedure grants the trial court authority to order sentences to run consecutively or concurrently. *See* TEX. CODE CRIM. PROC. ANN. art. 42.08 (Vernon 2006). However, the trial court's discretion is limited by section 3.03 of the Penal Code, which provides: "When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted *in a single criminal action*, a sentence for each offense for which he has been found guilty shall be pronounced. Except as provided

[1] Acrond also appealed his conviction in trial cause number 97334, and we address that appeal (No. 09-08-00468-CR) in a separate opinion.

by Subsection (b),[2] the sentences shall run concurrently." TEX. PEN. CODE ANN. § 3.03(a) (emphasis added).

The Court of Criminal Appeals has explained that "a defendant is prosecuted in 'a single criminal action' whenever allegations and evidence of more than one offense arising out of the same criminal episode . . . are presented in a single trial or plea proceeding, whether pursuant to one charging instrument or several, and the provisions of Section 3.03 then apply." *LaPorte v. State*, 840 S.W.2d 412, 415 (Tex. Crim. App. 1992). However, the Court of Criminal Appeals has also held that guilty pleas which follow one another do not constitute a single criminal action. *Ex parte Pharr*, 897 S.W.2d 795, 796 (Tex. Crim. App. 1995).

In the case at bar, at the guilty plea hearing, the hearing deferring adjudication of guilt, and the hearing at which the trial court revoked Acrond's community supervision, adjudicated him guilty, and pronounced sentence, the trial court called each case separately and dealt with each one individually before calling the next case. The cases bore separate cause numbers and were not consolidated.

During the hearing at which the trial court revoked Acrond's community supervision, adjudicated him guilty, and assessed punishment, the trial court called cause number 97334

---

[2] Subsection (b) is not applicable to the instant case. *See* TEX. PEN. CODE ANN. § 3.03(b).

first. After Acrond pled "true" to five violations of the terms of his community supervision in that case, the trial court accepted his pleas of true and then called cause number 97589. The trial court accepted Acrond's pleas of "true" to five violations of the terms of his community supervision. The trial court then asked Acrond's counsel whether he had "any comments[.]" Counsel then proceeded to argue concerning matters that apparently pertained to both cases, and the trial judge asked a few questions of Acrond, but did not specify to which case his questions referred. The trial court then stated that in cause number 97334, it found the evidence sufficient to find five counts in the motion to revoke true, revoked Acrond's community supervision, and assessed punishment at ten years of confinement. The trial court then asked, "In Cause No. 97589, any additional comments?" Counsel responded, "Same as before, Your Honor, ask the Court to consider running any time that the Court might give him on this case concurrent with his original case, please." The trial court next stated that in cause no. 97589, it found the evidence to be sufficient to find five counts in the motion to revoke true, revoked Acrond's community supervision, assessed punishment at twenty years of confinement, and ordered that the sentence would "run consecutive to Cause No. 97334."

Trial counsel's argument during the revocation hearing that apparently pertained to both cases, as well as the trial judge's somewhat ambiguous questioning of Acrond after he had called the first case, do not change the fact that the trial court called each case separately

and adjudicated the first case before proceeding with the second. Because cause numbers 97334 and 97589 were not prosecuted in a single criminal action, we hold that the trial court did not err by ordering Acrond's sentence in cause number 97589 to run consecutive to his sentence in cause number 97334. *See* TEX. PEN. CODE ANN. § 3.03; *Ex parte Pharr*, 897 S.W.2d at 796. Accordingly, we overrule Acrond's sole issue and affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on August 6, 2009
Opinion Delivered August 26, 2009
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.