

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00017-CR
NO. 09-09-00046-CR

JASMINE TYRONE HANCOCK, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 07-00014 and 07-01568

MEMORANDUM OPINION

Pursuant to plea bargain agreements, appellant Jasmine Tyrone Hancock pled guilty to two charges of evading arrest or detention using a motor vehicle. In each case, the trial court found Hancock guilty and assessed punishment at two years of confinement in a state jail facility, then suspended imposition of sentence, placed Hancock on community supervision for four years, and assessed a fine of \$750. In the section entitled “Terms of Plea Agreement (In Detail),” the trial court’s judgment in cause number 07-00014 provided, “to run concurrent with cause # 07-01568[.]”

The State subsequently filed a motion to revoke Hancock's community supervision in both cases. Hancock pled "true" in cause number 07-01568 to seven violations of the terms of the community supervision order. In cause number 07-00014, Hancock pled "not true" to the alleged violations of the terms of his community supervision. After conducting an evidentiary hearing in cause number 07-00014, the trial court concluded that the evidence was sufficient to find seven violations to be true. In both cases, the trial court found that Hancock violated the terms of the community supervision order, revoked Hancock's community supervision, and imposed a sentence of two years of confinement in a state jail facility. The trial court's judgment in cause number 07-01568 provided that Hancock's sentence would run consecutively to his sentence in cause number 07-00014.

Hancock then filed this appeal, in which he contends in his sole issue that the trial court erred by ordering his sentences to run consecutively. Specifically, Hancock argues that both of his offenses were for evading arrest with a motor vehicle, and because he was tried in a single criminal action, the trial court was not authorized to order his sentences to run consecutively. *See* TEX. PEN. CODE ANN. § 3.03 (Vernon Supp. 2009).

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 Supp. 2009). 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 by Subsection (b), the sentences shall run concurrently.”¹ TEX. PEN. CODE ANN. § 3.03 (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. *See Ex parte Pharr*, 897 S.W.2d 795, 796 (Tex. Crim. App. 1995).

Because Hancock’s cases involved repeated commission of the same offense, we conclude that they arise out of the same criminal episode. *See* TEX. PEN. CODE ANN. § 3.01 (Vernon 2003), § 3.03. Therefore, we turn to the issue of whether the cases were tried in a single criminal proceeding. At the guilty plea hearing in these cases, the trial court called the cases separately and dealt with each plea separately before calling the next case. During the same proceeding, the trial judge pronounced sentence in each

¹ Subsection (b) is not applicable to the instant case. *See* TEX. PEN. CODE ANN. § 3.03(b).

case, but he again called the cases separately and pronounced sentence in one case before calling the next case. The cases bore separate cause numbers and were not consolidated.

The Dix and Dawson treatise on CRIMINAL PRACTICE AND PROCEDURE contains the following explanation:

. . . It is not until the community supervisions are revoked and sentences imposed that the question of whether the *sentences* will run concurrently or consecutively arises. Even if the trial court when placing the defendant on community supervision announces that if the community supervisions are revoked concurrent sentences will be imposed, the court is still free upon revocation to impose consecutive sentences. The question is simply not ripe for decision until community supervision is revoked and sentences are imposed.

43 GEORGE E. DIX & ROBERT O. DAWSON, TEXAS PRACTICE: CRIMINAL PRACTICE AND PROCEDURE § 38.211, at 822 (2d ed. 2001) (footnotes omitted).

If the original offenses that led to community supervision were part of the same criminal episode and convictions were obtained as part of the same criminal action under Chapter 3 of the Texas Penal Code, then concurrent sentences must be employed if prison sentences are imposed. If community supervision is granted but later revoked, then any prison sentences imposed upon revocation must also be made to run concurrently. The test is whether the convictions were obtained in a single proceeding so that under Chapter 3 any sentences imposed must be concurrent. It makes no difference that community supervision terms were revoked in a single revocation proceeding.

Id. (footnotes omitted). Therefore, we look only to the original plea proceeding in determining whether ordering sentences to run consecutively is permissible. *See id.*

As previously discussed, the trial court dealt with each case separately during the original plea proceeding. Therefore, cause numbers 07-00014 and 07-01568 were not

prosecuted in a single criminal action. Accordingly, we hold that the trial court did not err by ordering Hancock's sentence in cause number 07-01568 to run consecutively to his sentence in cause number 07-00014. *See* TEX. PEN. CODE ANN. § 3.03; *Ex parte Pharr*, 897 S.W.2d at 796. We overrule Hancock's sole issue and affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on March 25, 2010
Opinion Delivered July 21, 2010
Do Not Publish

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