In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00038-CR
NO. 09-09-00039-CR

BRANDON DION CHARLES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 08-03415, 08-03635

MEMORANDUM OPINION

Pursuant to plea bargain agreements, appellant Brandon Dion Charles pled guilty to two charges of possession of a controlled substance. In both cases, the trial court found the evidence sufficient to find Charles guilty, but deferred further proceedings, placed Charles on community supervision for five years, and assessed a fine of $750. The State subsequently filed a motion to revoke Charles's unadjudicated community supervision in each case. In both cases, Charles pled "true" to two violations of the conditions of his

community supervision. In each case, the trial court found that Charles violated the conditions of his community supervision, found Charles guilty of possession of a controlled substance, and assessed punishment at ten years of confinement in trial cause number 08-03415 and twenty years of confinement in trial cause number 08-03635. Charles then filed these appeals.

PROPRIETY OF SENTENCE IN TRIAL CAUSE NUMBER 08-03415

In trial cause number 08-03415 (appeal number 09-09-00038-CR), Charles argues that the record does not indicate that he pled guilty to possessing the particular amount of substance alleged in the indictment, and he therefore may not be sentenced to more than two years of confinement. Specifically, Charles asserts that the amount of the controlled substance is an essential element to establish the offense as a third-degree felony rather than a state jail felony, and that because he did not plead guilty to possessing a particular amount of cocaine, the trial court could only sentence him to the lesser sentence (*i.e.* a state jail felony sentence). The indictment alleged that Charles possessed cocaine in the amount of at least one gram and less than four grams. In open court at the plea hearing, the trial court asked, "To this indictment, sir, do you enter into a plea of guilty or not guilty?" Charles responded, "Guilty." Therefore, we reject Charles's contention that he did not plead guilty to a third-degree felony offense, and we find that the trial court did not err by sentencing Charles for a third-degree felony. *See Keller v. State*, 125 S.W.3d 600, 605 (Tex. App.--Houston [1st Dist.] 2003, pet. dism'd) (A judicial confession to

allegations in an indictment, standing alone, is sufficient to sustain a conviction based upon a guilty plea.). In addition, we note that to the extent Charles's argument may encompass matters other than the legality of his sentence, he may not wait until revocation to argue issues relating to the original plea proceeding. *See Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999). Accordingly, we overrule this issue.

REVOCATION OF COMMUNITY SUPERVISION

In both appeals, Charles argues that the trial court abused its discretion by revoking his community supervision because there is a variance between the condition numbers the State's motions to revoke allege that he violated and the corresponding condition numbers in the deferred adjudication order. Specifically, Charles argues that "[j]ust like an indictment, the pleadings must be accurate. These are not, invalidating Mr. Charles['s] pleas of 'true.'" In both cases, Charles pled true to two violations of the conditions of his community supervision: (1) committing the offense of possession of a controlled substance on or about November 30, 2008, in violation of condition one, and (2) being arrested on or about November 30, 2008, in violation of condition ten. Charles argues that condition one ordered him "not to get arrested." In fact, condition one of the deferred adjudication orders required Charles to "[c]ommit no offense against the laws of this State or of any other state or of the United States[,]" and condition ten required Charles not to "use or possess any drug, except under the order of your doctor."

A plea of true to any one alleged violation is sufficient to support revocation of community supervision. *Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. 1979). In both cases, Charles pled "true" to possessing a controlled substance, in violation of condition one, as pled by the State in its motions to revoke. Therefore, the trial court did not abuse its discretion by revoking Charles's community supervision. *See id*. As to the other alleged violation, because Charles's pleas of true to the violation of condition one were sufficient to support the trial court's decision to revoke Charles's community supervision in both cases, we need not address the discrepancy between the condition number pled by the State and the corresponding condition number in the deferred adjudication order. We overrule this issue in both appeals.

ADEQUACY OF ADMONISHMENTS

In both cases, Charles asserts that the trial court erred by failing to admonish him concerning the full range of punishment and of the "full effect of failing to adhere to conditions of probation" before accepting his guilty plea. A defendant placed on deferred adjudication community supervision may raise issues relating to the original plea proceeding only in appeals taken when deferred adjudication community supervision is first imposed. *Manuel*, 994 S.W.2d at 661-62. Charles did not timely appeal the trial court's orders placing him on deferred adjudication community supervision. He may not raise issues in this appeal regarding the sufficiency of the trial court's admonishments

during the original plea proceeding. *See id*. Therefore, we overrule this issue in both appeals.

DUE PROCESS

In his final issue in both appeals, Charles contends that the trial court violated his due process rights by "soliciting information about unindicted offenses, disregarding impossibilities, and failing to consider any sentence less than the maximum number of years" at the revocation hearing. The record reflects that Charles did not raise these complaints before the trial court. To preserve error for appellate review, a party must make a timely and specific objection or motion at trial. TEX. R. APP. P. 33.1(a); *Tucker v. State*, 990 S.W.2d 261, 262 (Tex. Crim. App. 1999). Failure to preserve error at trial waives the later assertion of that error on appeal. *Ibarra v. State*, 11 S.W.3d 189, 197 (Tex. Crim. App. 1999). Even constitutional errors are generally waived if the appellant fails to object. *See* TEX. R. APP. P. 33.1(a); *Aldrich v. State*, 104 S.W.3d 890, 894-95 (Tex. Crim. App. 2003). There are two exceptions to the general rule, which involve violations of rights that are either "waivable-only" or "absolute systemic requirements." *Aldrich*, 104 S.W.3d at 895. Charles does not assert that his appellate complaints fall within these exceptions. Accordingly, we overrule this issue in both cases and affirm the trial court's judgments.

AFFIRMED.

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CHARLES KREGER
Justice

Submitted on April 16, 2010
Opinion Delivered June 9, 2010
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.