In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00233-CR
NO. 09-09-00234-CR

CHRISTOPHER LEE POUSSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 99006 and 99007

MEMORANDUM OPINION

Pursuant to plea bargain agreements, Christopher Lee Pousson pled guilty to two charges of forgery. *See* TEX. PEN. CODE ANN. § 32.21 (Vernon Supp. 2009).[1] Pousson appeals from the judgments in both cases: Trial Cause Number 99006 and Trial Cause Number 99007.[2] In his appeals, he contends that the trial court erred in ordering his

[1]We cite to the current version of the Texas Penal Code and Texas Code of Criminal Procedure throughout this opinion because the amendments to the cited provisions have no bearing on the law at issue in this appeal.

[2]The respective appellate cause numbers for the cases are No. 09-09-00233-CR and No. 09-09-00234-CR.

sentence in Cause Number 99007 to run consecutively to his sentence in Cause Number 99006. Because the issues are related, we consider the appeals together.

Background

After Pousson pled guilty to the allegations in the two indictments, the trial court in each of the cases found the evidence sufficient to find Pousson guilty, but then deferred further proceedings and placed Pousson on community supervision for four years. Approximately a year and a half later, in each of these cases, the State filed a motion to revoke the orders through which Pousson had been placed on unadjudicated community supervision. At the revocation and punishment hearing, Pousson pled "true" to eight violations of the conditions of his community supervision in Cause Number 99006 and pled "true" to two violations of his community supervision in Cause Number 99007. The trial court then, in each case, found Pousson had violated the conditions of the terms established for his community supervision, found Pousson guilty of forgery, and assessed his punishment at two years' confinement in State Jail. Next, the trial court orally pronounced that Pousson's two-year sentence in Cause Number 99007 was to run consecutively to his two-year sentence in Cause Number 99006.

Pousson appeals from the judgments entered by the trial court in each of the cause numbers and complains that the trial court improperly stacked his sentences. Pousson contends that because his offenses arose out of the same criminal episode, and because he was prosecuted in a single criminal action, the trial court erred by ordering his sentence in

Cause Number 99007 to run consecutively to his sentence in Cause Number 99006. *See* TEX. PEN. CODE ANN. § 3.03(a) (Vernon Supp. 2009) (providing that absent certain statutory exceptions, sentences assessed for multiple offenses arising out of the same criminal episode prosecuted in a single criminal action shall run concurrently).

The State concedes that Pousson's offenses arise from the same criminal episode, as Pousson was charged with the same offense–forgery–and both offenses were committed against the same victim on the same day. However, the State argues that the trial court did not err in stacking Pousson's sentence because he was not prosecuted in a single criminal action. While the State acknowledges that the proceedings were handled somewhat together, the State contends that "it is evident that there was no real co-mingling" of the cases, and that the "[c]ourt dealt with each proceeding with separate pleas of true or not true and also assessed punishment separately."

Analysis

Article 42.08 of the Code of Criminal Procedure grants the trial court authority to order sentences to either run consecutively or to run 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 Texas 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." TEX. PEN. CODE ANN. § 3.03(a) (emphasis added).[3]

Therefore, we must determine whether Pousson's adjudication and punishment proceeding was presented in a single trial or proceeding. As the Court of Criminal Appeals explained, "[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). The Court of Criminal Appeals later clarified that guilty pleas which follow one another do not necessarily constitute a single criminal action. *Ex parte Pharr*, 897 S.W.2d 795, 796 (Tex. Crim. App. 1995). Therefore, we review the record to evaluate whether the defendant's cases were handled separately although handled at one hearing; we have held that "when the record does not show that each case was dealt with separately, but instead reflects that multiple cases were considered together, the offenses are considered as having been prosecuted in a single criminal action." *Green v. State*, 242 S.W.3d 215, 220 (Tex. App.–Beaumont 2007, no pet.) (citing *Polanco v. State*, 914 S.W.2d 269, 271-72 (Tex. App.–Beaumont 1996, pet. ref'd)).

[3]Subsection (b) is not applicable to the instant case. *See* TEX. PEN. CODE ANN. § 3.03(b) (Vernon Supp. 2009).

At the hearing in the instant case, the trial court began by calling Cause Number 99006. The trial court received Pousson's pleas to the several alleged violations of his community supervision that pertained to that case. The trial court then called Cause Number 99007 and received Pousson's pleas to the two alleged violations of his community supervision. At that point, the hearings began to merge into one proceeding. The trial court prompted Pousson's counsel to speak, but did not indicate which of the two cases to address. At that point, Pousson's counsel argued matters that appear to be related to both cases. Pousson then addressed the trial court, and the trial judge asked him a few questions, but again, the trial court did not specify the case to which his questions referred. The State's attorney then recommended revocation, but again was not specific as to which case the State intended to address. In summary, based on the transcript of the hearing, we are left to surmise that the State wanted Pousson's deferred adjudication orders revoked in both cases. At that point, the trial court stated that in Cause Number 99006, it found the evidence sufficient to find eight counts in the motion to revoke true, revoked Pousson's community supervision, and assessed Pousson's punishment at two years of confinement. The trial court then, without interruption, stated that it found the evidence sufficient to revoke its order of community supervision in Cause Number 99007, revoked Pousson's community supervision, and assessed punishment at two years of confinement. The trial court ordered that Pousson's sentence in Cause Number 99007 would run consecutively to the sentence in Cause Number 99006.

Like *Green* and *Polanco*, Pousson was indicted under separate indictments and entered separate pleas of "true" during his revocation proceeding. *Green*, 242 S.W.3d at 220; *Polanco*, 914 S.W.2d at 271. Nonetheless, although the trial court accepted Pousson's pleas separately, the trial court conducted the remainder of the revocation hearing jointly. The transcript of the hearing reflects that issues pertaining to both cases were jointly addressed. For instance, the trial court did not request additional evidence from Pousson in the second case, Cause Number 99007, before deciding to revoke its community supervision order, adjudicate Pousson's guilt, or decide Pousson's sentence. When plea proceedings do not present separate proceedings, "but instead are conducted in a manner that they are 'so intertwined that we are left only to conclude they are a single criminal action[,]' a court may not order consecutive sentences." *Green*, 242 S.W.3d at 220 (quoting *Polanco*, 914 S.W.2d at 272).

We conclude that the trial court chose to conduct the adjudication and punishment hearings in the two cases in a single plea proceeding. As a result, the trial court did not have the authority to cumulate Pousson's sentences and make them run consecutively.[4] *See* TEX. PEN. CODE ANN. § 3.03; *see also LaPorte*, 840 S.W.2d at 415. Pousson's issues are

[4]While the trial court pronounced its decision to cumulate Pousson's sentences, it never signed a written cumulation order. *See Thompson v. State*, 108 S.W.3d 287, 290 (Tex. Crim. App. 2003) (holding that, generally, when the oral pronouncement of a sentence in open court and the written judgment conflict, the oral pronouncement controls); *see also Taylor v. State*, 131 S.W.3d 497, 500, 502 (Tex. Crim. App. 2004) (applying *Thompson* in a deferred adjudication case).

sustained. His sentences are to run concurrently. However, because the judgments in Cause Number 99006 and Cause Number 99007 do not include a cumulation order, we need not reform them.[5] While we sustain Pousson's issues as they complain about the trial court's oral pronouncement of his sentence, the written judgments entered in Trial Cause Numbers 99006 and 99007 correctly reflect that Pousson's sentences are to run concurrently, and thus they are affirmed.

AFFIRMED.

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HOLLIS HORTON
Justice

Submitted on December 28, 2009
Opinion Delivered January 20, 2010
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Before McKeithen, C.J., Kreger and Horton, JJ.

[5]Generally, in cases where a trial court impermissibly cumulates a defendant's sentence, the reviewing court reforms the written judgment to delete the cumulation order. *See Merritt v. State*, 252 S.W.3d 757, 761 (Tex. App.–Texarkana 2008, no pet.); *Green v. State*, 242 S.W.3d 215, 221 (Tex. App.–Beaumont 2007, no pet.); *Baker v. State*, 107 S.W.3d 671, 673-74 (Tex. App.–San Antonio 2003, no pet.).