

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00468-CR
NO. 09-09-00469-CR

PATRICK BROWN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 08-03946 and 08-04102

MEMORANDUM OPINION

These are appeals from the revocation of deferred adjudication community supervision and imposition of sentence. We affirm the trial court's judgments as modified.

Pursuant to plea bargain agreements, appellant Patrick Brown pled guilty to two charges of burglary of a building. In both cases, the trial court found the evidence sufficient to find Brown guilty, but deferred further proceedings and placed Brown on community

supervision for five years. The State subsequently filed a motion to revoke Brown's unadjudicated community supervision in each case. In both cases, Brown pled "true" to two violations of the conditions of his community supervision.

In each case, the trial court found that Brown violated the conditions of his community supervision and found him guilty. In trial cause number 08-03946, the trial court orally pronounced a sentence of two years of confinement in a state jail facility; however, the trial court's judgment states that Brown's sentence is five years of confinement in a state jail facility. In trial cause number 08-04102, the trial court pronounced a sentence of two years of confinement in a state jail facility, and ordered that the sentence would run consecutively to Brown's sentence in cause number 08-03946.

On appeal, Brown argues that his sentence in trial cause number 08-03946 exceeds the permissible maximum punishment for the offense, and that the cumulative sentence in trial cause number 08-04102 is void because the sentence upon which it is stacked exceeds the maximum permissible punishment.¹ A trial court's judgment, including the sentence assessed, is the written declaration and embodiment of its oral pronouncement, and when there is a conflict, the oral pronouncement controls. *Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004). As previously stated, the trial court orally pronounced a sentence of two years of confinement in a state jail facility, which is the maximum punishment

¹ Brown states that the trial court failed to comply with Section 3.03 of the Penal Code. *See* TEX. PEN. CODE ANN. § 3.03 (Vernon Supp. 2009). However, the only argument Brown briefed is his contention that the cumulative sentence is void because the sentence upon which it is stacked exceeds the maximum permissible punishment.

authorized by statute for burglary of a building. *See* TEX. PEN. CODE ANN. § 12.35(a) (Vernon Supp. 2009) (a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days); TEX. PEN. CODE ANN. § 30.02(c)(1) (Vernon 2003) (burglary of a building is a state jail felony). This Court has the authority to reform the trial court’s judgment to correct a clerical error. *See Bigley v. State*, 865 S.W.2d 26, 27 (Tex. Crim. App. 1993). Therefore, in trial cause number 08-03946, we delete “5 years state jail division” from the section of the judgment entitled “Punishment and Place of Confinement” and substitute “2 years state jail division” in its place.

We also note that in trial cause number 08-04102, although Brown pleaded guilty to burglary of a building, the trial court’s judgment cites the statute for engaging in organized criminal activity. Therefore, in trial cause number 08-04102, we delete “71.02 Penal Code” from the section of the judgment entitled “Statute for Offense” and substitute “30.02 Penal Code” in its place. We affirm the trial court’s judgments as reformed.

AFFIRMED AS REFORMED.

STEVE McKEITHEN
Chief Justice

Submitted on February 10, 2010
Opinion Delivered February 17, 2010
Do Not Publish

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