

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00428-CR

DEAN JOHNSON JAMES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 221st District Court
Montgomery County, Texas
Trial Cause No. 15-05-05064-CR

MEMORANDUM OPINION

In his sole issue on appeal, appellant Dean Johnson James complains that his conviction and sentence for evading arrest or detention using a motor vehicle violates the Double Jeopardy Clause of the Texas and United States Constitutions because the record contains a prior judgment of conviction for the same offense. We affirm the trial court's judgment.

BACKGROUND

A grand jury indicted James for evading arrest or detention using a motor vehicle, a third-degree felony. See Tex. Penal Code Ann. § 38.04(a), (b)(2)(A) (West

Supp. 2016). The indictment alleged four prior felony convictions for purposes of enhancing James's punishment. In January 2016, the trial court conducted a plea proceeding, during which the State offered James ten years in prison and agreed to abandon the deadly weapon finding and the enhancement paragraphs. During the plea proceeding, James repeatedly indicated that he was confused concerning the terms of the plea agreement and the range of punishment.

After James pleaded guilty, the trial court asked James if he was doing so of his own free will, and James stated, "[w]ith timewise yeah." The trial court then asked James if anyone was threatening him, and James stated, "[w]ell yeah. She said she would give me 50." At that point, the trial court ended the plea proceeding without accepting James's guilty plea. The clerk's record indicates that prior to the plea proceeding, James's competency to stand trial had been an issue in the case.

Although the reporter's record from the plea proceeding shows that the trial court did not accept James's guilty plea or orally pronounce James's sentence, a judgment signed by the trial judge who presided over the plea proceeding appears in the clerk's record. The judgment, which is dated January 21, 2016, indicates that James pleaded guilty and was sentenced to a term of ten years in prison. However, the record shows that in October 2016, James pleaded "[n]ot guilty[]" to the offense at issue, and the case proceeded to trial. A jury found James guilty of evading arrest or detention using a motor vehicle, that he used or exhibited a deadly weapon during

the commission of the offense, and that the allegations in all four of the enhancement paragraphs were true. The jury assessed James's punishment at a term of fifty-eight years in prison and also assessed a \$5000 fine. The trial court orally pronounced James's sentence in accordance with the jury's verdict and entered a judgment of conviction. James appealed the jury's verdict.

ANALYSIS

In his sole issue, James complains that his October 2016 conviction and sentence for evading arrest or detention using a motor vehicle violates the Double Jeopardy Clause of the Texas and United States Constitutions because the record contains a prior judgment of conviction from a January 2016 plea proceeding. *See* U.S. CONST. amend. V; Tex. Const. art. 1, § 14. While James may argue that the violation is clearly apparent from the face of the record because there are two signed judgments of conviction in the clerk's record, a review of the reporter's record from the plea proceeding shows that the January 2016 written judgment is invalid.

The reporter's record from the January 2016 plea proceeding shows that the trial court did not orally pronounce any sentence; thus, the trial court made a mistake by entering the January 2016 written judgment of conviction sentencing James to ten years in prison. *See Thompson v. State*, 108 S.W.3d 287, 290 (Tex. Crim. App. 2003) (holding that when trial court does not pronounce sentence but sentences the defendant in a written judgment, the written judgment is invalid). Based on this

record, the entry of the January 2016 written judgment appears to be a clerical error. *See Towery v. State*, 262 S.W.3d 586, 595-96 (Tex. App.—Texarkana 2008, pet. ref'd). We conclude that the trial court's January 2016 written judgment from the plea proceeding is invalid, and that there is no prior conviction and sentence about which James can complain on appeal. *See Thompson*, 108 S.W.3d at 290. Accordingly, because a valid judgment of conviction was not previously entered for the same offense prior to James's jury trial, jeopardy did not attach. *See generally Towery*, 262 S.W.3d at 594. We overrule James's sole issue and affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on October 13, 2017
Opinion Delivered November 8, 2017
Do Not Publish

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