In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-16-00061-CR

MARION RAYMON CRENSHAW, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 13th District Court
Navarro County, Texas
Trial Court No. D36179-CR

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

Marion Raymon Crenshaw entered an open plea of guilty to possession of cocaine, in an amount of one gram or more but less than four grams, with intent to deliver. The trial court sentenced Crenshaw to six years' imprisonment, ordered him to pay attorney fees for his court-appointed counsel to Navarro County, and also ordered him to pay $180.00 in restitution to the Department of Public Safety (DPS) Crime Laboratory.

On appeal,[1] based on the belief that he was not eligible for community supervision because he was previously convicted of a felony, Crenshaw argues that neither his plea of guilty nor his waiver of a jury trial was intelligently and knowingly entered. He also argues that his counsel rendered ineffective assistance by misinforming him of his eligibility for community supervision and by choosing to focus on community supervision during punishment. Additionally, Crenshaw argues that his judicial confession is legally insufficient to support a finding of guilt and that the trial court erred in ordering him to pay restitution and attorney fees.

We conclude that Crenshaw was eligible for judge-ordered community supervision. Consequently we overrule his points of error related to whether his plea of guilty or his waiver of a jury trial was intelligently and knowingly entered, and whether counsel rendered ineffective assistance. We also find that Crenshaw's judicial confession was legally sufficient to support the trial court's judgment. However, we conclude that the trial court erred in ordering Crenshaw to (1) pay restitution to a non-victim and (2) pay attorney fees in the absence of evidence

[1]Originally appealed to the Tenth Court of Appeals in Waco, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013). We follow the precedent of the Tenth Court of Appeals in deciding this case. *See* TEX. R. APP. P. 41.3.

demonstrating that he had the ability to pay them. Consequently, we delete both the restitution order and order to pay attorney fees from the trial court's judgment. As modified, we affirm the trial court's judgment.

I. Crenshaw Was Eligible for Judge-Ordered Community Supervision

The defendant must prove he has not been previously convicted of a felony in order to receive community supervision from a jury. *See* Act of May 29, 1993, 73d Leg., R.S., ch. 900, § 4.01, sec. 4, 1993 Tex. Gen. Laws 3586, 3718–19, *repealed by* Act of May 26, 2015, 84th Leg., R.S., ch. 770, § 3.01, 2015 Tex. Gen. Laws 2321, 2395 (re-codified at TEX. CODE CRIM. PROC. art. 42A.055(b)(1) (West Supp. 2016)). Because the appellate record in this case demonstrates that Crenshaw was previously convicted of a felony, Crenshaw believes he was not entitled to community supervision. We disagree.

The requirement that a defendant not be previously convicted of a felony offense in order to receive community supervision applies when the jury assesses punishment, but it is not required when, as in this case, the trial court assesses punishment. Accordingly, since Crenshaw was eligible for community supervision, we overrule his points of error complaining that (1) his guilty plea was not voluntarily entered, (2) his waiver of jury trial was not voluntarily entered, and (3) his counsel rendered ineffective assistance.

II. Crenshaw's Plea Was Supported by Legally Sufficient Evidence

The State is required to introduce evidence demonstrating the defendant's guilt, and no trial court is authorized to render a conviction in a felony case based on a plea of guilty without sufficient evidence to support the same. TEX. CODE CRIM. PROC. ANN. art. 1.15 (West 2005).

"Article 1.15 '[b]y its plain terms . . . requires evidence in addition to, and independent of, the plea itself to establish the defendant's guilt.'" *Baggett v. State*, 342 S.W.3d 172, 174 (Tex. App.—Texarkana 2011, pet. ref'd) (quoting *Menefee v. State*, 287 S.W.3d 9, 14 (Tex. Crim. App. 2009)). This is because even if the defendant states that he or she is pleading guilty to the charges in the indictment under oath, a guilty plea "does not constitute a judicial confession [since] the defendant is merely entering a plea, 'not confessing to the truth and correctness of the indictment or otherwise providing substance to the plea.'" *Id.* (quoting *Menefee*, 287 S.W.3d at 13, 15).

In open court, Crenshaw merely stated that he was pleading guilty to the State's indictment, without confessing to the truth and correctness of the indictment or otherwise providing substance to the plea. Therefore, the State was required to introduce evidence supporting Crenshaw's guilt. To satisfy Article 1.15, the State introduced a document signed by Crenshaw, which stated, "The Defendant JUDICIALLY CONFESSES to committing the offense(s) of poss c/s w/intent, exactly as charged within the indictment or information."

"A defendant's judicial confession is adequate to find the evidence legally sufficient to support his conviction," provided that it covers every element of the charged offense. *Hoffman v. State*, 922 S.W.2d 663, 672 (Tex. App.—Waco 1996, pet. ref'd); *see Menefee v. State*, 287 S.W.3d 9, 14 (Tex. Crim. App. 2009). Although Crenshaw's judicial confession contained slack abbreviations, did not indicate that the intent mentioned was the intent to deliver, and omitted the type and amount of the controlled substance allegedly possessed, he judicially confessed to committing the offense of possession of a controlled substance as alleged in the indictment. Based on the language of the judicial confession and the indictment, we must conclude that the judicial

confession embraced every element of the charged offense and contained sufficient reference to the indictment's allegations to support the trial court's conviction on his guilty plea under Article 1.15. Therefore, we find that Crenshaw's plea of guilty was supported by legally sufficient evidence. Accordingly, we overrule this point of error.

III. We Delete the Order to Pay Attorney Fees

Under Article 26.05(g) of the Texas Code of Criminal Procedure, a trial court has the authority to order the reimbursement of court-appointed attorney fees only if "the judge determines that a defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided, . . . including any expenses and costs." TEX. CODE CRIM. PROC. ANN. art. 26.05(g) (West Supp. 2016). "[T]he defendant's financial resources and ability to pay are explicit critical elements in the trial court's determination of the propriety of ordering reimbursement of costs and fees" of legal services provided. *Armstrong v. State*, 340 S.W.3d 759, 765–66 (Tex. Crim. App. 2011) (quoting *Mayer v. State*, 309 S.W.3d 552, 556 (Tex. Crim. App. 2010)).

Because Crenshaw was indigent and is presumed to remain indigent absent record proof of a material change in his circumstances, the judgment incorrectly assessed an unspecified amount of court-appointed attorney fees.[2] *See* TEX. CODE CRIM. PROC. ANN. arts. 26.04(p), 26.05(g) (West Supp. 2016); *Mayer v. State*, 309 S.W.3d 552, 557 (Tex. Crim. App. 2010); *Watkins v. State*, 333

[2]The trial court also appointed Crenshaw counsel on appeal.

S.W.3d 771, 781–82 (Tex. App.—Waco 2010, pet. ref'd). The State concedes this point and asks this Court to modify the trial court's judgment.

Appellate courts "have the authority to reform judgments and affirm as modified in cases where there is non reversible error." *Ferguson v. State*, 435 S.W.3d 291, 293 (Tex. App.—Waco 2014, pet. struck) (comprehensively discussing appellate cases that have modified judgments). Accordingly, we modify the trial court's judgment by deleting the assessment of an unspecified amount of attorney fees, and also the language ordering Crenshaw to "REIMBURSE NAVARRO COUNTY FOR COURT APPOINTED FEES" from the judgment.

IV. We Delete the Order to Pay Restitution

The Texas Code of Criminal Procedure allows for the trial court, in its discretion, to order a defendant to make restitution "to any victim of the offense." TEX. CODE CRIM. PROC. ANN. art. 42.037(a) (West Supp. 2016). "Restitution serves multiple purposes, including restoring the victim to the status quo and forcing an offender to address and remedy the specific harm that he has caused." *Hanna v. State*, 426 S.W.3d 87, 91 (Tex. Crim. App. 2014). "However, the legislature has also recognized limits on the right to restitution: . . . it may be ordered only to a victim of an offense for which the defendant is charged." *Id.*

"[D]eletion of a written restitution order is appropriate . . . when the trial judge does not have statutory authority to impose the specific restitution order." *Burt v. State*, 445 S.W.3d 752, 757 (Tex. Crim. App. 2014). "For example, . . . a trial judge does not have authority to order restitution to anyone except the victim(s) of the offense for which the defendant is convicted." *Id.*

at 757–58. Imposition of restitution to someone other than a victim is a violation of due process. *Id.* at 758.

Here, the trial court ordered Crenshaw to pay $180.00 in restitution to the DPS Crime Laboratory. The State concedes that the DPS was not a victim of Crenshaw's crime and further concedes that the order to pay restitution was improper. Accordingly, we further modify the trial court's judgment by deleting the restitution order.

V. Conclusion

We affirm the trial court's judgment, as modified.

Bailey C. Moseley
Justice

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Date Decided: February 23, 2017

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