

AFFIRM; and Opinion Filed August 1, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-15-01050-CR

**ERIC BURSEY, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 3
Dallas County, Texas
Trial Court Cause No. F-1430476-J**

MEMORANDUM OPINION

Before Justices Lang-Miers, Brown, and Schenck
Opinion by Justice Brown

Appellant Eric Bursey appeals his conviction for aggravated sexual assault of a child. In a single issue, appellant complains the trial court assessed punishment based on an enhancement paragraph without affirmatively finding the enhancement paragraph was true. For the following reasons, we affirm.

Appellant was indicted for aggravated sexual assault of a child. The State subsequently filed a special plea alleging appellant had a prior felony conviction. Appellant pleaded guilty to the offense and true to the enhancement paragraph. The trial court accepted appellant's plea of true, but did not make an affirmative finding that the paragraph was true. Following a punishment hearing, the trial court assessed a fifteen-year sentence, the minimum sentence permitted under the enhanced punishment range. The trial court's judgment shows the trial court

made a finding that the enhancement paragraph was true. Appellant nevertheless asserts that because the trial court did not orally pronounce an affirmative finding of true, it did not make a finding of true. We disagree.

A trial court is not required to make an express finding of true to an enhancement paragraph or to orally pronounce such a finding. *Davis v. State*, 05-14-01374-CR, 2016 WL 310093, at *6 (Tex. App.—Dallas Jan. 26, 2016, no pet.); *Seeker v. State*, 186 S.W.3d 36, 38 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd); *see also Almand v. State*, 536 S.W.2d 377, 379 (Tex. Crim. App. 1976); *Donaldson v. State*, 476 S.W.3d 433, 443 (Tex. Crim. App. 2015). If a defendant pleads true to an enhancement paragraph, and the record shows the trial court assessed punishment under the enhanced range, we may infer the trial court made a finding of true. *Almand*, 536 S.W.2d at 379; *Donaldson*, 476 S.W.3d at 443. We may infer such a finding even when the judgment fails to reflect the finding. *Almand*, 536 S.W.2d at 379. We may not, however, infer a finding if the record shows the trial court refused to make a finding. *Donaldson*, 476 S.W.3d 443.

Here, appellant pleaded true to the enhancement paragraph, the trial court accepted his plea and assessed punishment based on the enhanced range of punishment. Nothing in the record suggests the trial court refused to make a finding. To the contrary, the trial court later reduced its finding to writing in its written judgment. *Breazeale v. State*, 683 S.W.2d 446, 450 (Tex. Crim. App. 1984) (recitations in judgment are presumed correct absent showing to the contrary).

We resolve the sole issue against appellant and affirm the trial court's judgment.

/Ada Brown/
ADA BROWN
JUSTICE

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TEX. R. APP. P. 47.2(b)

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ERIC BURSEY, Appellant

No. 05-15-01050-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 3, Dallas County, Texas

Trial Court Cause No. F-1430476-J.

Opinion delivered by Justice Brown. Justices
Lang-Miers and Schenck participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 1st day of August, 2016.