

Opinion issued November 17, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-10-00119-CR

LAKESHIA LAVINE, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 208th District Court
Harris County, Texas
Trial Court Case No. 1172326

MEMORANDUM OPINION

Lakeshia Lavine pleaded guilty to the offense of murder.¹ After a hearing on the return of a presentence investigation report, the trial court found Lavine

¹ See TEX. PENAL CODE ANN. § 19.02 (West 2011).

guilty and assessed punishment at confinement for 25 years. In her sole issue on appeal, Lavine contends her guilty plea was not voluntary.

We affirm.

Background

A grand jury indicted Lavine for murder. She pleaded guilty without an agreed recommendation as to punishment, but she and the State agreed that her sentence would not exceed 30 years' confinement. The trial court deferred a finding of guilt on Lavine's plea and ordered the preparation of a presentence investigation report. With respect to the preparation of the report, Lavine initialed the following waiver in the trial court's written admonishments:

I understand that before sentence may be imposed, the Court must order preparation of a Presentence Investigation Report by the probation officer pursuant to Article 42.12, Sec. 9, V.A.C.C.P. I have thoroughly discussed this matter with my attorney and believe that for the Court to compel me to participate in the preparation of such a report would abridge the protection provided me by the Constitution of the United States and the Constitution and laws of the State of Texas and could result in further prejudice to me. Therefore, I hereby in writing respectfully decline to participate in the preparation of a Presentence Investigation Report and request that said report not be made prior to the imposition of sentence herein. I further knowingly, voluntarily, and intelligently waive any right which I may have to the preparation of said report either under Article 42.12, Sec. 9, V.A.C.C.P. or under Article 42.09, Sec. 8, V.A.C.C.P.

She also waived her right to have a court reporter record her guilty plea and acknowledged that the plea was freely and voluntarily made and that she

understood its consequences. Lavine's trial counsel and the trial judge signed the same written admonishments.

The trial court acknowledged receipt of the presentence investigation report before sentencing. Thereafter, during the presentencing hearing, Lavine affirmed that she did not want to withdraw her guilty plea. Her trial counsel's only objections to the report were that it incorrectly stated a date in Lavine's juvenile record and incorrectly identified Lavine's co-defendant.

After hearing testimony about the events giving rise to the complainant's death, the trial court found Lavine guilty and sentenced her to 25 years' confinement. The judgment recites that Lavine was properly admonished and that it appeared to the trial court she freely and voluntarily pleaded guilty and understood the consequences of that plea. The trial court gave Lavine permission to appeal. *See* TEX. R. APP. P. 25.2(a)(2)(B).

Voluntariness of Guilty Plea

In her sole issue, Lavine argues her guilty plea was not voluntary because the trial court's written admonishment regarding the preparation of a presentence investigation report was misleading. She asserts that the admonishment gave the false impression that she could decline to participate in the preparation of the presentence investigation report and could prevent one from being made before the imposition of sentence.

“A guilty plea constitutes a waiver of three constitutional rights: the right to a jury trial, the right to confront one’s accusers, and the right not to incriminate oneself.” *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006). “The ‘overriding concern’ in reviewing the constitutional validity of a guilty plea is ‘whether a defendant has been deprived of due process and due course of law.’” *Holland v. State*, 761 S.W.2d 307, 322 (Tex. Crim. App. 1988) (quoting *Ex parte Lewis*, 587 S.W.2d 697, 700 (Tex. Crim. App. 1979)). To satisfy due process, a guilty plea “must be entered knowingly, intelligently, and voluntarily.” *Kniatt*, 206 S.W.3d at 664; *see also* TEX. CODE CRIM. PROC. ANN. art. 26.13(b) (West 2011) (requiring that guilty plea be made voluntarily and freely); *Labib v. State*, 239 S.W.3d 322, 332 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

When determining the voluntariness of a guilty plea, we consider the record as a whole. *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998) (per curiam); *Labib*, 239 S.W.3d at 332. When the record reflects that the defendant was properly admonished by the trial court before pleading guilty, it presents a prima facie showing that the plea was made freely and voluntarily. *Martinez*, 981 S.W.2d at 197; *Labib*, 239 S.W.3d at 332. The burden then shifts to the defendant to show she entered the plea without understanding its consequences. *Labib*, 239 S.W.3d at 332. A defendant who attests that she understands the nature of her plea

and that it was voluntary has a heavy burden on appeal to show that her plea was involuntary. *Id.*

Lavine signed a plea agreement. That agreement contained several paragraphs of admonishments, waivers, and explanations of her rights. It informed Lavine of the charge against her and the punishment range, that the trial court was not bound by the sentencing cap agreed to by the State, and that her right to appeal may be limited. Lavine initialed each paragraph, including one providing as follows:

Joined by my counsel, I state that I understand the foregoing admonishments and I am aware of the consequences of my plea. I am mentally competent to stand trial and my plea is freely and voluntarily made.

Lavine's counsel also signed the agreement under a paragraph stating that she "believe[d] that this document was executed by [Lavine] knowingly and voluntarily and after [she] fully discussed it and its consequences with [Lavine]."

Finally, the trial judge certified that,

[a]fter I admonished [Lavine] of the consequences of [her] plea, I ascertained that [she] entered it knowingly and voluntarily after discussing the case with [her] attorney. It appears that [Lavine] is mentally competent and the plea is free and voluntary.

The admonishment about which Lavine complains on appeal relates to the preparation of a presentence investigation report. By her initials, she agreed to waive participation in the preparation of the report and requested that it not be

prepared before her sentence was determined. However, that waiver does not in any way contradict the statements that her plea was freely and voluntarily made. We presume that the recitals in the plea agreement are correct, and we conclude that the written waivers and admonishments present a prima facie showing that Lavine knowingly and voluntarily pleaded guilty. *See Breazeale v. State*, 683 S.W.2d 446, 450 (Tex. Crim. App. 1984); *see also Labib*, 239 S.W.3d at 332. Lavine therefore bears the heavy burden of showing otherwise. *See Labib*, 239 S.W.3d at 332.

Even assuming she mistakenly believed that a presentence investigation report would not be prepared before the trial court determined her sentence, Lavine has not shown that she would not have pleaded guilty had she known that the presentence investigation report would be prepared. Instead, the record reflects that she actually participated in the presentence investigation report, knew the trial court had received the completed report at the time the sentencing hearing commenced, and then affirmed that she still wished to plead guilty after the report was prepared. Her trial counsel made no objection to either her participation in the preparation of the report or its admission and the consideration of her statements therein. And, the trial court imposed a sentence that was less than the cap agreed to by Lavine and the State. On this record, we conclude that Lavine has not carried her heavy burden of demonstrating that he plea was involuntary.

Accordingly, we overrule Lavine's sole issue.

Conclusion

We affirm the trial court's judgment. All outstanding motions are dismissed as moot.

Harvey Brown
Justice

Panel consists of Justices Jennings, Sharp, and Brown.

Do not publish. TEX. R. APP. P. 47.2(b).