Opinion issued June 2, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-14-00981-CR

DAVID JAMES CHAPMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 183rd District Court
Harris County, Texas
Trial Court Case No. 1421329

MEMORANDUM OPINION

David James Chapman pleaded guilty to committing theft of property and was sentenced to eight years in jail. Chapman contends that he did not enter his plea voluntarily because he (1) incorrectly believed that he could withdraw his

guilty plea; (2) incorrectly believed he could receive community supervision; and (3) did not have sufficient mental capacity to plead guilty.[1] We affirm.

Background

Chapman was charged with committing theft of property and threatening the victim with a deadly weapon. TEX. PENAL CODE ANN. § 31.03 (West Supp. 2015). After Chapman was taken into custody and told the State that he did "not understand his options," the State filed a motion for a psychiatric examination to determine whether Chapman was competent to stand trial.

The psychiatric examiner interviewed Chapman and concluded that he "currently appears to be sufficiently able to satisfy the elements or factors for competency." Although he found that Chapman was "affected by a *moderate* degree of impairment" and showed some "signs of having mental illnesses or mental problems and of being a person with mental retardation," he concluded that Chapman was "sufficiently able to engage with counsel in a reasonable and rational manner at the present time (i.e., if he chooses to do so)." He further opined that, despite these moderate impairments, Chapman "demonstrated the sufficient

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[1] Chapman filed numerous letters and pro se briefs with this court. Because a criminal defendant has no right to hybrid representation on appeal, we consider only the issues raised in Chapman's counsel's brief and do not address the points raised in the letters and pro se briefs. *See Rudd v. State*, 616 S.W.2d 623, 625 (Tex. Crim. App. 1981); *Landers v. State*, 550 S.W.2d 272, 280 (Tex. Crim. App. 1977); *see also Giles v. State*, No. 01-08-00410-CR, 2010 WL 2133893, at *1 (Tex. App.—Houston [1st Dist.] May 27, 2010, pet. ref'd) (mem. op., not designated for publication).

ability to rationally understand the charges and the potential consequences of the pending criminal proceedings. . . . [and] the sufficient ability to disclose to counsel pertinent facts, events, and states of mind at the present time."

During his examination, the examiner described three pleas to Chapman to determine if he could understand his options and choose between them. Chapman told the examiner that he believed he could make an appropriate choice between his options, including going to trial or accepting a plea bargain, "as long as he [had] the assistance of his mother." For example, Chapman described a plea bargain as "a trade." The examiner concluded that "[o]verall, he demonstrated the sufficient ability to engage in a reasoned choice of legal strategies and options at the present time."

The examiner also found that Chapman could handle himself appropriately in court. Chapman "demonstrated the sufficient ability to exhibit appropriate courtroom behavior at the present time . . . ." Chapman also "demonstrated the sufficient ability to testify on his own behalf at the present time."

After the psychiatric examination, Chapman pleaded guilty to aggravated robbery "without a [sentencing] recommendation" or presentence investigation report. Chapman signed a representation to the trial court stating, "I am mentally competent. I understand the charge(s) against me, and I understand the nature of these proceedings. I am freely and voluntarily pleading guilty or no contest."

Chapman was represented by an attorney, who did not challenge Chapman's competency to plead guilty. Chapman acknowledged that he could "read and write English" and that he "read" and understood his plea agreement. He also acknowledged that the plea agreement was read to him and that he understood its contents.

The trial court admonished Chapman that the punishment range for his crime was five years to life imprisonment. It then accepted Chapman's plea and sentenced him to eight years in jail. Chapman appeals.

Voluntary Plea

Chapman argues that "there are several instances which support [his] contentions that he misunderstood what was to happen" and that he had "a less than reliable understanding" of the consequences of his plea.

A. Standard of review and applicable law

By agreeing to plead guilty, a criminal defendant waives three constitutional rights: (1) the right against self-incrimination; (2) the right to confrontation; and (3) the right to trial by jury. *Ex parte Palmberg*, No. WR-82,876-01, 2016 WL 747604, at *2 (Tex. Crim. App. Feb. 24, 2016). "Because such significant constitutional rights are at stake, due process requires that their relinquishment in the course of a guilty plea be undertaken voluntarily, with sufficient awareness of the consequences." *Id.* But that "sufficient awareness" does not require a

"comprehensive awareness of the specific impact that relinquishing his constitutional rights may have . . . ." *Id.* at *3. Thus, "even when the defendant enters [a guilty plea] while operating under various misapprehensions about the nature or strength of the State's case against him," the defendant may still have "sufficient awareness of the relevant circumstances." *Id.*

A trial court cannot accept a guilty plea unless it appears that the plea is made freely and voluntarily. *Ex parte Evans*, 690 S.W.2d 274, 276 (Tex. Crim. App. 1985). "To be 'voluntary,' a guilty plea must be the expression of the defendant's own free will and must not be induced by threats, misrepresentations, or improper promises." *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006). The defendant must be informed of the "direct" consequences of his plea; in other words, he must be informed of the consequences that are "definite and largely or completely automatic." *Mitschke v. State*, 129 S.W.3d 130, 135 (Tex. Crim. App. 2004).

Before accepting a guilty plea, the trial court must give the defendant certain admonishments in part to ensure that the plea is voluntary. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13 (West Supp. 2015). If the trial court gives these admonishments, a "prima facie showing" exists that the defendant pleaded guilty voluntarily. *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998). The burden then shifts to the defendant to prove that "he did not fully understand the

consequences of his plea such that he suffered harm." *Id.*; *see Ex parte Wilson*, No. WR-83,056-01, 2015 WL 2452771, at *1 (Tex. Crim. App. May 20, 2015) (defendant "would have had to rely on that error when he entered his plea of guilty" to overturn guilty plea). If the defendant "attests during the initial plea hearing that his plea is voluntary," the defendant has a "heavy burden" on appeal to prove that his plea was involuntary. *Houston v. State*, 201 S.W.3d 212, 217 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

We examine the totality of the circumstances in determining whether the defendant entered his plea voluntarily. *Downs v. State*, 137 S.W.3d 837, 840 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd). When, like here, we do not have a reporter's record of the plea hearing, we must presume the "regularity and truthfulness" of the proceedings, and the defendant has the burden to overcome this presumption. *Breazeale v. State*, 683 S.W.2d 446, 450–51 (Tex. Crim. App. 1984); *Downs*, 137 S.W.3d at 840.

B. Chapman's plea

Chapman acknowledged in writing that he received and understood the statutory admonishments, including the sentence range, which creates prima facie evidence of a voluntary plea. *Martinez*, 981 S.W.2d at 197. Chapman, therefore, has a "heavy burden" to show that he did not voluntarily plead guilty. *See Houston*, 201 S.W.3d at 217. Chapman alleges that he satisfied this burden and entered the

plea involuntarily because he (1) believed he could withdraw his guilty plea; (2) thought he would receive deferred adjudication; and (3) was mentally incompetent to plead guilty.

1. Ability to withdraw plea

Chapman first argues that he was "misinformed about potential consequences" of pleading guilty "and led to believe that he would be receiving deferred adjudication or would otherwise be allowed to withdraw his plea of guilty." "Misinformation concerning a matter, such as probation, about which a defendant is not constitutionally or statutorily entitled to be informed, may render a guilty plea involuntary if the defendant shows that his guilty plea was actually induced by the misinformation." *Tabora v. State*, 14 S.W.3d 332, 336 (Tex. App.—Houston [14th Dist.] 2000, no pet.) Chapman does not provide any argument or analysis on how or when he was "misinformed" by another person about the consequences of his plea and, therefore, has waived that argument. *See* TEX. R. APP. P. 38.1(i) (requiring brief to contain citations to legal authority in support of arguments); *Canton-Carter v. Baylor Coll. of Med.*, 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008, no pet.) ("Failure to cite legal authority or to provide substantive analysis of the legal issues presented results in waiver of the complaint.").

Chapman next argues that he incorrectly understood that he could withdraw the plea if he was dissatisfied with the sentence the trial court imposed when he pleaded guilty. Other than his argument that he was not mentally competent (which we address below), Chapman does not provide any authority holding that a defendant's misunderstanding of the consequences of a plea, even when he is given correct information, make the plea involuntary.

In any event, Chapman provides no evidence that he misunderstood his ability to withdraw his plea. He only cites the State's motion for psychiatric examination, which states that Chapman told the State that he "doesn't understand his options" and believes that he has the option to "withdraw his plea if dissatisfied with his sentence." But the State filed this motion before Chapman decided to plead guilty and before the trial court admonished him. After being admonished by the trial court, Chapman acknowledged that he understood his "plea's consequences." Chapman provides no evidence that, after being admonished by the trial court, he still believed that he could withdraw his guilty plea. Thus, Chapman did not meet his "heavy burden" to prove that his plea was involuntary. *See Houston*, 201 S.W.3d at 217.

2. Possibility of community supervision

Next, Chapman argues that, in pleading guilty, he relied on the erroneous belief that the trial court would sentence him to community supervision. The record does not support his position that he relied on any misinformation.

Chapman cites his motion for community supervision to support his assertion that he relied on his eligibility for community supervision in pleading guilty. But that motion does not indicate that he *expected* to be placed on community supervision; by "request[ing]" community supervision, the motion contemplates that the trial court may deny his request. At best, Chapman's motion for community supervision shows that he believed that he *could* receive community supervision. Such an erroneous belief is not adequate to show that Chapman was prejudiced. *See Medford v. State*, 766 S.W.2d 398, 401 (Tex. App.—Austin 1989, writ ref'd) (holding that erroneous statement by defense counsel that defendant may not receive jail time did not prejudice defendant because attorney did not "promise" probation); *Rivera v. State*, No. 14-01-00795-CR, 2002 WL 31426696, at *2 (Tex. App.—Houston [14th Dist.] Oct. 31, 2002, no pet.) (not designated for publication) (holding that defendant's motion for probation does not show prejudice because trial court properly admonished him on sentence range).

Additionally, other parts of the record indicate that Chapman did not expect to receive community supervision. During his psychiatric examination, Chapman told the examiner that he thought he would be sentenced to 15 years in jail if he pleaded guilty. Additionally, the trial court admonished him that the sentence range was five years to life.

Thus, Chapman did not meet his "heavy burden" to prove that he was prejudiced by an incorrect belief that he would receive community supervision after being admonished on the correct sentence range by the trial court. *See Houston*, 201 S.W.3d at 217.

3. Competency

Finally, Chapman argues that he was mentally incompetent to plead guilty. "The constitutional standard for competency to stand trial asks whether the defendant has a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." *Turner v. State*, 422 S.W.3d 676, 689 (Tex. Crim. App. 2013). A trial court cannot accept a guilty plea if it appears that the defendant is mentally incompetent. *Evans*, 690 S.W.2d at 276. A defendant's assertion that he is incompetent to plead guilty does not satisfy his burden to prove that he did not understand the consequences of the plea. *Martin v. State*, No. 04-03-00470-CR, 2005 WL 1334357, at *1–2 (Tex. App.—San Antonio

June 8, 2005, no pet.) (mem. op., not designated for publication). Additionally, a diagnosis of schizophrenia or other "mental illness" does not, by itself, establish that the defendant is incompetent to plead guilty. *See Grider v. State*, 69 S.W.3d 681, 684 (Tex. App.—Texarkana 2002, no pet.); *Townsend v. State*, 949 S.W.2d 24, 27 (Tex. App.—San Antonio 1997, no pet.); *Lingerfelt v. State*, 629 S.W.2d 216, 217 (Tex. App.—Dallas 1982, pet. ref'd).

The psychiatric examiner found that Chapman was competent to plead guilty. Chapman does not allege that the examiner's conclusion was incorrect, that his methodology was flawed, or that other evidence contradicted his conclusion. Additionally, Chapman represented to the trial court that he was "mentally competent" to plead guilty and understood the charges against him.

The evidence that Chapman cites as proof that he was mentally incompetent does not show that he did not understand the consequences of his plea. Although the examiner found that Chapman had some mental impairments, mental competency does not address whether a person suffers from a "mental illness"; it addresses whether the defendant has the ability to understand the consequences of his plea. *Turner*, 422 S.W.3d at 689. Additionally, the examiner concluded that these impairments were "*moderate*" and that they did not affect his ability to

voluntarily plead guilty. Chapman does not cite any evidence in the record to challenge the examiner's findings. [2]

Thus, Chapman did not meet his "heavy burden" to prove that he did not have sufficient mental capacity to enter a guilty plea. *See Houston*, 201 S.W.3d at 217.

Conclusion

We affirm Chapman's conviction.

Harvey Brown
Justice

Panel consists of Justices Keyes, Brown, and Huddle.

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

[2] Chapman argues that his "several handwritten, pro se motions . . . demonstrate a diminished capacity" because of "their rudimentary appearance." Chapman cites no case law or supporting arguments that multiple pro se motions may overcome contrary expert testimony and demonstrate, in themselves, a diminished capacity. He, thus, waived that argument on appeal. *See* TEX. R. APP. P. 38.1(i) (requiring brief to contain citations to legal authority in support of arguments); *Canton-Carter*, 271 S.W.3d at 931.