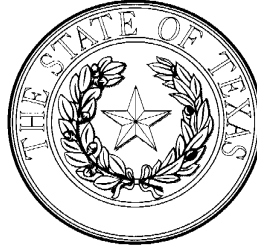


Opinion issued June 30, 2022



In The
Court of Appeals
For The
First District of Texas

NOS. 01-21-00094-CV & 01-21-00134-CV

IN THE MATTER OF D.G.W.

**On Appeal from the 314th District Court
Harris County, Texas
Trial Court Case Nos. 2020-01788J & 2020-01789J**

MEMORANDUM OPINION

The trial court adjudged D.G.W., a minor, delinquent based on his commission of two aggravated robberies and assessed determinate sentences of 12 years with the Texas Juvenile Justice Department accompanied by the possibility of transfer to the Texas Department of Criminal Justice once he became an adult. In a single issue, D.G.W. appeals from the trial court's judgments on the ground that the

evidence is legally insufficient to support the trial court's finding that he needs a highly structured environment with a level of supervision and control that cannot be met by resources available within the community. We affirm the trial court.

BACKGROUND

D.G.W., who was 16 years old when he engaged in the conduct resulting in these delinquency proceedings, signed stipulations of evidence in both cases. In the first case, D.G.W. stipulated that he used a firearm to commit theft from another and intentionally and knowingly threatened and placed his victim in fear of imminent bodily injury and death. In the second case, D.G.W. stipulated that he used a firearm to commit theft from a second person two days later and intentionally and knowingly threatened and placed this victim in fear of imminent bodily injury and death.

Consistent with the stipulations, D.G.W. pleaded true to both aggravated robberies alleged by the State. The trial court then held a disposition hearing.

The trial court found D.G.W. to have engaged in delinquent conduct and to be in need of rehabilitation in both cases. The trial court further found that D.G.W.'s delinquent conduct constituted one of the offenses specified in Section 53.045 of the Family Code, which includes aggravated robbery, and that D.G.W. had used a deadly weapon, a firearm, when he engaged in this delinquent conduct. The trial court found that a disposition was required for the protection of both D.G.W. and the public, and that D.G.W.'s home could not provide the quality of care and level

of support and supervision he needs to meet the conditions of probation. In its determinate-sentencing judgments, the trial court committed D.G.W. to the care, custody, and control of the Texas Juvenile Justice Department for a term of 12 years, with the possibility of transfer to the Texas Department of Criminal Justice.

D.G.W. appeals.

DISCUSSION

On appeal, D.G.W. contends the trial court erred by making a special finding from the bench that he “needs a highly structured environment with a level of supervision and control that cannot be met by the resources available within the community” because no evidence in the record supports this special finding.

The special finding is not memorialized in the trial court’s written judgments, presumably because the finding was unnecessary. Section 54.04013 of the Family Code is the statutory provision concerning special findings of this sort. It provides:

Notwithstanding any other provision of this code, after a disposition hearing held in accordance with Section 54.04, the juvenile court may commit a child who is found to have engaged in delinquent conduct that constitutes a felony offense to the Texas Juvenile Justice Department *without a determinate sentence* if the court makes a special commitment finding that the child has behavioral health or other special needs that cannot be met with the resources available in the community. The court should consider the findings of a validated risk and needs assessment and the findings of any other appropriate professional assessment available to the court.

TEX. FAM. CODE § 54.04013 (emphasis added).

As the emphasized language of Section 54.04013 shows, however, the statute requires this special finding solely in cases “without a determinate sentence.” D.G.W. concedes on appeal that the trial court sentenced him to determinate sentences. Consequently, Section 54.04013 does not apply to his case, and the trial court was not required to find that his needs could not be met with the resources available in the community to impose the determinate sentences it imposed.

When a trial court makes a special finding under Section 54.04013 that the court is not statutorily required to make, the finding is immaterial. *In re G.B.*, No. 13-19-00581-CV, 2021 WL 3085990, at *3 (Tex. App.—Corpus Christi July 22, 2021, no pet.) (mem. op.). Any error associated with the unnecessary and immaterial finding is harmless and cannot support reversal. *Id.* Accordingly, we need not decide whether legally sufficient evidence supports this special finding in this case. *Id.*; *McCardell v. Peterson*, 493 S.W.2d 288, 290 (Tex. App.—Houston [1st Dist.] 1973, no writ) (rejecting claim that trial court’s findings lacked support in record because challenged findings were immaterial and could not constitute reversible error).

It is undisputed that the trial court made the findings statutorily required to impose the determinate sentences it did. *See* FAM. § 54.04(c), (d)(3), (g), (i). D.G.W. does not challenge the sufficiency of the evidence supporting any of these findings.

We overrule D.G.W.’s sole appellate issue.

CONCLUSION

We affirm both of the trial court's judgments.

Gordon Goodman
Justice

Panel consists of Chief Justice Radack and Justices Goodman and Hightower.