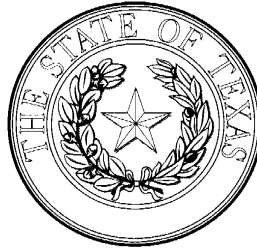


Opinion issued July 28, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00630-CR

CHRISTIAN DILLARD, Appellant
V.
THE STATE OF TEXAS, Appellee

**On Appeal from the 230th District Court
Harris County, Texas
Trial Court Case No. 1525953**

MEMORANDUM OPINION

Christian Dillard asks us to modify his judgment adjudicating guilt to reflect that he did not plead true to the motion to adjudicate his guilt, and the State agrees that Dillard is entitled to this relief. Because the record reflects that Dillard did not plead true, we modify the judgment to delete this finding and affirm as modified.

BACKGROUND

Dillard pleaded guilty to the offense of aggravated robbery with a deadly weapon. The trial court deferred adjudicating Dillard's guilt and placed him on community supervision for a period of ten years and imposed a fine of \$1,000.

The State later moved to adjudicate Dillard's guilt, alleging, among other things, that Dillard had committed several crimes while on community supervision. These alleged crimes included assault of a family member, unauthorized use of a vehicle, aggravated robbery with a deadly weapon, capital murder, harassment of a public servant, assault of a peace officer, and aggravated assault of a public servant. The State also alleged he violated several terms of his community supervision.

The trial court held a hearing on the State's motion to adjudicate. Defense counsel waived the reading of the motion, so Dillard did not enter a plea as to it.

Several witnesses testified at the hearing. Based on this testimony, the trial court found that the State had proved by a preponderance of the evidence that it was true that Dillard had committed the crimes of unauthorized use of a vehicle, harassment of a public servant, and assault of a peace officer. Accordingly, the trial court entered a finding of guilt as to the original offense of aggravated robbery with a deadly weapon on which the trial court previously had deferred adjudication.

The trial court entered a judgment adjudicating Dillard's guilt and assessed his punishment at 45 years of confinement. In the trial court's written judgment, the

trial court found that Dillard had pleaded true to the State’s motion to adjudicate.

DISCUSSION

On appeal, Dillard solely challenges the trial court’s finding that he had pleaded true to the allegations contained in the State’s motion to adjudicate guilt.

Applicable Law

Confession of Error

We give due consideration to the State’s confession of error, but its confession is not dispositive. *Saldano v. State*, 70 S.W.3d 873, 884 (Tex. Crim. App. 2002). We must independently assess the merits of an appellant’s claim of error. *Id.*; accord *Estrada v. State*, 313 S.W.3d 274, 286 (Tex. Crim. App. 2010) (proper administration of criminal law cannot be left to stipulation of parties); see, e.g., *Neale v. State*, 525 S.W.3d 800, 810–13 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (independently analyzing issue and affirming despite State’s confession of error).

Modification of Judgments

The rules of appellate procedure authorize us to “modify the trial court’s judgment and affirm it as modified.” TEX. R. APP. P. 43.2(b). Under the rules, an appellate court may “reform a judgment to include an affirmative finding to make the record speak the truth when the matter has been called to its attention by any source.” *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992). We may

likewise delete such a finding to accurately reflect the record. *Malbrough v. State*, 612 S.W.3d 537, 563–64 (Tex. App.—Houston [1st Dist.] 2020, pet. ref’d).

Analysis

The record shows that Dillard waived the reading of the State’s motion to adjudicate his guilt and did not plead true or not true to the allegations in the motion. Therefore, the trial court’s written finding that Dillard pleaded true is erroneous, and Dillard is entitled to have this erroneous finding deleted. *See, e.g., Deleon v. State*, Nos. 01-15-00927–28-CR, 2016 WL 6599622, at *3 (Tex. App.—Houston [1st Dist.] Nov. 8, 2016, no pet.) (mem. op., not designated for publication) (deleting erroneous finding in trial court’s judgment that defendant had pleaded true to State’s motions to adjudicate and affirming trial court’s judgment as modified).

CONCLUSION

We modify the trial court’s judgment adjudicating guilt to delete the finding that Dillard pleaded true to the allegations made by the State in its motion to adjudicate his guilt, and we affirm the trial court’s judgment as modified.

Gordon Goodman
Justice

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

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