

Affirmed and Memorandum Opinion filed January 13, 2011.



In The

Fourteenth Court of Appeals

NO. 14-09-01066-CR
NO. 14-09-01067-CR

PHYLLIS SMITH, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause Nos. 1148930, 1202375**

MEMORANDUM OPINION

Appellant Phyllis Smith challenges her felony convictions for aggregate theft and securing execution of a document by deception. She complains that the trial court abused its discretion by failing to *sua sponte* withdraw her guilty pleas when the evidence received by the court established that (a) she was not guilty of the offenses and (b) she lacked the requisite intent to commit the offenses. We affirm.

BACKGROUND

On September 29, 2009, appellant pleaded guilty to the offenses of aggregate theft and securing execution of a document by deception. In her signed written

admonishments and guilty pleas for each offense, she acknowledged the ranges of punishment, waived a jury trial, stated she was mentally competent and understood both the nature of the charges and the court's admonishments, and stated that she "freely, knowingly and voluntarily executed th[ese] statement[s] in open court." The trial court accepted appellant's guilty pleas. Based on her pleas and the evidence, the trial court found her guilty as charged in each case. The trial court reset the case for a punishment hearing in December 2009 to allow time for preparation of a pre-sentence investigation ("PSI") report.

On December 15, the trial court conducted a PSI hearing. Near the beginning of the hearing, the trial court stated that it had "withheld a finding of guilt" on appellant's original plea and asked appellant if she had anything further to add before it made its finding of guilt.¹ Appellant's counsel replied, "Not on that subject, Your Honor. . . ." The trial court again found appellant guilty as charged in each of the cases. After reviewing the PSI and hearing the testimony of appellant, the trial court assessed punishment at forty years and a \$10,000 fine for each offense, sentences to be served concurrently. This appeal timely followed.

ANALYSIS

First, we note that appellant lists two issues for our review, but her briefs only contain argument and analysis for a single issue: that the trial court should have withdrawn her guilty pleas *sua sponte* when evidence in the PSI raised an issue as to her innocence.² Thus, we confine our analysis to this single issue and overrule her second issue for failing to adequately brief it. *See* Tex. R. App. P. 38.1(i) ("The brief must

¹ There is no explanation in our record for the inconsistency between the trial court's earlier finding of guilt on September 29, 2009, and this statement at the beginning of the PSI hearing.

² Appellant did not provide a written statement to the PSI reporter. The reporter indicated, however, that appellant did not admit her guilt or any wrongdoing, stated that she regrets what happened, and asserted that if she had known stolen identities had been used, she would not have done business with her co-conspirators. Yet appellant admitted to the PSI reporter that she knew there was a "grey area" regarding the investment dealings that lead to her arrest and indictments. She further acknowledged that if she did something wrong, then she has to "pay."

contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.”).

Notwithstanding information contained in a PSI report, withdrawal of a guilty plea is not required when a jury has been waived and the case submitted to the court. *Fisher v. State*, 104 S.W.3d 923, 923 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (citing *Moon v. State*, 572 S.W.2d 681, 682 (Tex. Crim. App. 1978) (en banc), *Solis v. State*, 945 S.W.2d 300, 302–03 (Tex. App.—Houston [1st Dist.] 1997, pet. ref’d), and *Graves v. State*, 803 S.W.2d 342, 346 (Tex. App.—Houston [14th Dist.] 1990, pet. ref’d)). In such a situation, the trial court is not required to withdraw a guilty plea because the court is free to make any findings based on the evidence regardless of the plea. *Id.*

Here, appellant expressly and voluntarily waived her right to a jury trial, signed a judicial confession to the offenses charged, received the required admonishments,³ and entered a guilty plea. The court found appellant mentally competent, found her plea to be voluntary, and found sufficient evidence to support her guilt. Thus, the trial court did not abuse its discretion in failing to *sua sponte* withdraw her guilty plea based on information contained in the PSI report. *See id.* We overrule her first issue.

Having overruled each of appellant’s issues, we affirm the trial court’s judgments.

/s/ Adele Hedges
Chief Justice

Panel consists of Chief Justice Hedges, Justice Jamison, and Senior Justice Mirabal.*

Do Not Publish — Tex. R. App. P. 47.2(b).

³ See Tex. Code Crim. Proc. Ann. art. 26.13 (West Supp. 2009).

* Senior Justice Margaret Garner Mirabal sitting by assignment.