Affirmed and Memorandum Opinion filed January 6, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00529-CR

EX PARTE DANIEL RODRIGUEZ

On Appeal from the County Criminal Court at Law No. 6
Harris County, Texas
Trial Court Cause No. 9619967

M E M O R A N D U M O P I N I O N

This is an appeal from the denial of an application for habeas corpus relief from a misdemeanor conviction. In four issues appellant argues (1) the trial court abused its discretion in denying relief because its findings are based on matters outside the record, (2) the trial court denied his rights to due process by acting as a litigant, (3) his guilty plea in a 1996 misdemeanor conviction was involuntary, and (4) the trial court violated his rights to effective assistance of counsel by failing to assure that appellant's decision in 1996 to proceed without counsel was made voluntarily and intelligently. We affirm.[1]

[1] Ordinarily, this court would not have jurisdiction over an appeal of the denial of a post-conviction writ of habeas corpus. *See* Tex. Code Crim. Proc. art. 11.07. However, because appellant

Background

On September 13, 1996, appellant entered a plea of guilty to misdemeanor driving while intoxicated ("DWI") and was sentenced to 40 days in the Harris County Jail. Appellant did not appeal from that conviction. On September 13, 2007, appellant entered a plea of guilty to felony DWI , and was sentenced, pursuant to a plea-bargain agreement with the State, to 25 years' confinement in the Institutional Division of the Texas Department of Criminal Justice.

On December 23, 2009, appellant filed an application for writ of habeas corpus in the County Criminal Court at Law. In his application, appellant challenged his 1996 conviction, and argued that his plea was involuntary because he was not represented by counsel, and the trial court failed to properly admonish him as to the range of punishment or the consequences of his guilty plea. Appellant further argued that cumulatively, both errors resulted in a violation of his right to due process.

On February 18, 2010, the trial court denied appellant's application for writ of habeas corpus. In denying appellant's application, the trial court entered findings of fact and conclusions of law in which it concluded:

- The records of the Justice Information Management System (JIMS) reflect that Applicant was represented by hired counsel, namely, Mr. Mark A. Castillo. JIMS records are inherently reliable because they are made contemporaneously with the filing of a source document by the clerk of the court: In this case the source document would have been the Attorney of Record form required to be submitted pursuant to the Local Rules of the Harris County Criminal Courts at Law in effect at the time.
- In 1996, as is the case today, a judge presiding over a plea of guilty in a misdemeanor case is not required to inform or admonish the defendant.
- The judgment in the underlying case reflects that Applicant's attorney was Mark A. Castillo.

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appealed from the denial of a post-conviction writ in a misdemeanor conviction, the court of appeals has jurisdiction. *See Ex parte Jordan*, 659 S.W.2d 827, 828 (Tex. Crim. App. 1983).

- The judgment reflects that the judge who presided over Applicant's plea admonished and advised Applicant consistent with prevailing constitutional principles, and exceeded those required by the Code of Criminal Procedure.

The trial court concluded that appellant's plea proceeding was consistent with prevailing constitutional principles, and that his collateral attack was barred by laches.

Jurisdiction

The State argues this court lacks jurisdiction over appellant's appeal for two reasons. First, the State argues appellant is not entitled to an appeal because the trial court did not consider and resolve the merits of appellant's habeas-corpus application. In arguing appellant cannot appeal the trial court's decision, the State relies on the decision in *Ex parte Hargett*, 819 S.W.2d 866 (Tex. Crim. App. 1991). However, this is an appeal from the denial of a writ of habeas corpus involving an individual who completed a term of community supervision. This action, therefore, is controlled by section 8 of article 11.072 of the Code of Criminal Procedure. That section specifically permits an appeal if the application is denied in whole or in part. Tex. Code Crim. Proc. Ann. art. 11.072 § 8. The Court of Criminal Appeals determined that, "[t]aken together, Sections 4 and 8 [of article 11.072] signify that the rule governing appellate review that was most recently clarified in *Hargett* . . . no longer applies to applications for a writ of habeas corpus filed by a person who is serving or who has served a community supervision term." *Ex parte Villanueva*, 252 S.W.3d 391, 397 (Tex. Crim. App. 2008). Therefore, *Hargett* does not apply to this appeal.

Second, the State argues the trial court lacked jurisdiction to hear appellant's application for writ of habeas corpus under article 11.09 of the Code of Criminal Procedure because he is no longer "confined" under that charge. For a court to have jurisdiction over a habeas application in a misdemeanor case under article 11.09, an applicant must be confined or restrained by either a charge or a conviction. *Ex parte Schmidt*, 109 S.W.3d 480, 483 (Tex. Crim. App. 2003). Appellant is no longer confined by this conviction; however, the jurisdiction of the county court to issue the writ of

habeas corpus is not limited to cases in which the applicant is confined. *Id.* at 481. Collateral consequences related to a conviction, such as the use of the conviction to enhance punishment in other cases, may also constitute confinement. *Ex parte Crosley*, 548 S.W.2d 409, 410 (Tex. Crim. App. 1977). Therefore, the trial court had jurisdiction to rule on appellant's application for writ of habeas corpus.

Standard of Review

To prevail on a writ of habeas corpus, the proponent must prove his allegations by a preponderance of the evidence. *Ex parte Thomas*, 906 S.W.2d 22, 24 (Tex. Crim. App. 1995). We review a trial court's ruling on an application for a writ of habeas corpus under an abuse-of-discretion standard. *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006). The trial court filed written findings of fact and conclusions of law. In conducting our review, we accord great deference to the trial court's findings and conclusions. *Ex parte Amezquita*, 223 S.W.3d 363, 367 (Tex. Crim. App. 2006).

Analysis

In his third and fourth issues, appellant argues his plea was involuntary because the court failed to admonish him as to the range of punishment, and the court failed to assure that his decision to proceed without counsel was made voluntarily and intelligently.

Appellant bore the burden of proving that he did not waive his right to counsel, or that he did not receive the proper admonishments on a guilty plea. *See Maddox v. State*, 591 S.W.2d 898, 902 (Tex. Crim. App. 1979), *cert. denied*, 447 U.S. 909, (1980). Texas courts have long and consistently held that the admonishments of article 26.13 are only required in felony pleas, not pleas in misdemeanor cases. *See Berliner v. State*, 6 Tex.App. 181 (1879); *Johnson v. State*, 39 Tex.Crim. 625, 48 S.W. 70 (1898); *Tatum v. State*, 861 S.W.2d 27, 29 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd). Therefore, the trial court correctly found that the court in 1996 was not required to admonish appellant of the consequences of his plea pursuant to article 26.13 of the Code of

Criminal Procedure.

Further, a guilty plea is generally considered voluntary if the defendant was made fully aware of the direct consequences. *State v. Jimenez*, 987 S.W.2d 886, 888 (Tex. Crim. App. 1999). A consequence is "collateral" if it is not a definite, practical consequence of a defendant's guilty plea. *Cuthrell v. Director, Patuxent Institution*, 475 F.2d 1364, 1366 (4th Cir.1973), *cert. denied*, 414 U.S. 1005 (1973). Ignorance of a collateral consequence does not render a plea involuntary. *Jimenez*, 987 S.W.2d at 888.

> Courts have characterized deportation, possible enhancement of punishment, institution of separate civil proceedings against defendant for commitment to mental health facility, loss of good time credit, possibility of imposition of consecutive sentences, deprivation of rights to vote and to travel abroad, deprivation of the right to vote in some jurisdictions, and the possibility of undesirable discharge from the armed forces, as "collateral consequences" of which a defendant does not have to be knowledgeable before his plea is considered knowing and voluntary. Therefore, when a defendant is fully advised of the direct consequences of his plea, his ignorance of a collateral consequence does not render the plea involuntary.

Ex parte Morrow, 952 S.W.2d 530, 536 (Tex. Crim. App. 1997) (citations omitted).

The possibility that appellant may commit future offenses and be indicted more than 10 years later for felony DWI cannot be said to be a direct consequence of appellant's plea in the 1996 misdemeanor DWI. Therefore, appellant failed to carry his burden of proving his plea was involuntary because the trial court improperly admonished him as to the range of punishment and his right to counsel. Appellant's third and fourth issues are overruled.

In his first two issues, appellant argues the trial court erred in considering evidence from the Judicial Information Management System (JIMS) in finding that appellant was represented by counsel. Appellant further argues that the trial court improperly denied relief based on laches because the State never presented evidence that it was prejudiced by the delay.

That the reasons given by the trial court for its decision may appear faulty does not

necessarily mandate reversal because our duty is to uphold a correct judgment on any legal theory before the court. *Ex parte Pipkin*, 935 S.W.2d 213, 215, n. 2 (Tex. App.—Amarillo 1996, pet. ref'd). Given our determination that appellant did not meet his burden to show his plea was involuntary, we need not discuss the trial court's reliance on JIMS records or laches.

The judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Brown.
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