Affirmed and Memorandum Opinion filed February 25, 2016

In The

Fourteenth Court of Appeals

NO. 14-15-00216-CR
NO. 14-15-00217-CR
NO. 14-15-00218-CR
NO. 14-15-00219-CR

RODNEY DEAN SEWELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause Nos. 1402508, 1403353, 1408337 and 1417442

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

In this appeal from multiple convictions, we consider whether appellant's guilty pleas were involuntary and whether he was denied due process of law. *See* Tex. Code Crim. Proc. Ann. art. 26.13(b). We conclude that appellant's guilty pleas were made knowingly and voluntarily. Accordingly, we affirm.

BACKGROUND

Appellant was charged by indictment with five unrelated offenses: three separate aggravated robberies with deadly weapons, one possession of a weapon by a felon, and one murder. Counsel filed an *Anders* brief in appellate cause number 14-15-00215-CR, one of the aggravated robberies. Thus, this appeal addresses only the four remaining convictions.

Appellant decided to plead guilty in all four cases. Appellant argued his pleas were involuntary because he proclaimed his innocence shortly before he entered his pleas and felt pressured to plead guilty by the trial court. Appellant testified that he accepted a plea bargain in one of the aggravated robbery cases but had rejected the State's plea bargains on the other cases because he "[was] not guilty of all of them." The trial court admonished appellant it was his choice to go to trial, but that it was possible the sentences in each case would be stacked. The trial court told appellant:

> If for some reason you try the case, which you are certainly welcome to do, you are exposed all the way up to life. And my understanding that in these kinds of cases, and if they don't get enough time on you what they can do, they can try the second one and then they can stack them. . . And then they do this five times. And then they get whatever they get. It's just –it's way, way, way beyond what can happen to you today.

Appellant asserted he wanted to try the remaining four cases because "he didn't do the other cases." Appellant's defense counsel then asked appellant if he would accept a plea bargain for 30 years on the aggravated robbery case and 25 years on the others. Appellant answered in the affirmative. The court instructed the parties to discuss the deal. After a recess, appellant pleaded guilty in all four cases.

Prior to his guilty pleas, the trial court admonished appellant orally regarding the State's plea offers to confinement in the Texas Department of Criminal Justice, Institutional Division (TDCJ-ID). The court explained the sentences would run concurrently on each case: 30 years in 1417442, 25 years in 1403353, 25 years in 1408337, and 20 years in 1402508. After each admonishment, appellant testified he "pleaded guilty for the plea bargain." He later explained that he was "just accepting a plea bargain so I don't have to go to trial."

Appellant was also admonished in writing. Appellant signed a "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession" in which he agreed "I understand the above allegations and I confess that they are true." In each case, the trial court sentenced appellant in accordance with the terms of his plea bargain.

The trial court certified that appellant had the right to appeal and appellant gave timely notice of appeal in all four cases.

ANALYSIS

Appellant's sole point of error is that the trial court erred in accepting his pleas of guilty despite his assertions of innocence, thus denying appellant due process of law.

A trial court may not accept a plea of guilty unless it appears that the defendant is mentally competent and that the plea is free and voluntary. *See* Tex. Code Crim. Proc. Ann. art. 26.13(b) (West 2009). The voluntariness of a guilty plea is determined by the totality of the circumstances. *Griffin v. State*, 703 S.W.2d 193, 196 (Tex. Crim. App. 1986). Where, as here, the record shows that the defendant was duly admonished, there is a prima facie showing that the guilty plea was entered knowingly and voluntarily. *See Mallett v. State*, 65 S.W.3d 59, 64

(Tex. Crim. App. 2001). By signing the admonishments, a heavy burden is placed upon the defendant to show a lack of voluntariness. *See Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998) (per curiam); *Chapa v. State*, 407 S.W.3d 428, 432 (Tex. App.—Houston [14th Dist.] 2013, no pet.). The defendant must demonstrate that he did not fully understand the consequences of his plea such that he suffered harm. *See Martinez*, 981 S.W.2d at 197.

Appellant contends the trial court erred in accepting his pleas of guilty despite his assertions of innocence. He complains the trial court's comments about the possibility of stacked sentences persuaded him to change his decision to go to trial and thereby rendered his pleas involuntary. The test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative sources of action open to the criminal defendant. *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). "[A] trial judge should not participate in any plea bargain agreement discussions until an agreement has been reached between the prosecutor and the defendant." *Perkins v. Court of Appeals for Third Supreme Judicial Dist. of Tex.*, 738 S.W.2d 276, 282 (Tex. Crim. App. 1987). The purpose of this is to avoid the appearance of judicial coercion. *Id.* However, if a trial judge improperly injects himself into the plea negotiations it does not make that plea involuntary. *Ex parte Shuflin*, 528 S.W.2d 610, 615 (Tex. Crim. App. 1975). "[R]ather, the promise must be of the prohibited type to affect the voluntariness of the defendant's plea." *Id.* (quoting *Brown v. Peyton,* 435 F.2d 1352 (4th Cir. 1970)).

The record shows that the trial court, along with trial counsel, repeatedly told appellant that it was his choice whether or not to plead guilty. The trial court correctly informed appellant that if he chose to go to trial, the full range of punishment could be considered on each charge and the sentences could be

stacked. Furthermore, the record shows that appellant changed his mind about accepting the plea bargain after the State lowered the plea offer and appellant consulted privately with defense counsel. Even if we assume without deciding that the trial judge improperly participated in the plea bargain discussions, the record shows appellant voluntarily accepted the plea bargains.

Additionally, appellant's claims of innocence do not render his pleas involuntary. *See Alford*, 400 U.S. at 31. We note that even when a defendant protests his innocence, various considerations may motivate him to plead guilty. *See Mallet*, 65 S.W.3d at 64. The fact that appellant now, in hindsight, thinks he should have risked going to trial does not warrant the conclusion that appellant's decisions were involuntary at the time they were made.

In *Alford,* the Supreme Court held that strong evidence of the defendant's guilt coupled with the defendant's desire to enter into the guilty plea, despite his professed belief in his innocence, was sufficient to uphold a guilty plea. *Alford,* 400 U.S. at 37–38. Here, appellant argues the court is required to have similar strong evidence to uphold his guilty pleas. We disagree. An *Alford* guilty plea is a plea of guilty without admission of guilt. Strong evidence of the defendant's guilt is constitutionally required before a court may accept a defendant's *Alford* guilty plea because there is no admission of guilt. *See Johnson v. State*, 478 S.W.2d 954, 955 (Tex. Crim. App. 1972) (noting that "[a] plea of guilty *not supported by an express admission of guilt*, if supported by a factual basis, is not violative of the United States Constitution") (citing *Alford*, 400 U.S. at 38 (emphasis supplied). In other words, the *Alford* guilty plea is no more than a nolo contendere. *See U.S. v. Buonocore*, 416 F.3d 1124, 1129–30 (10th Cir. 2005) (holding that the proper procedure when a defendant offers an *Alford* plea or a guilty plea accompanied by protestations of innocence is to treat the plea as a plea of nolo contendere).

In this case, despite early protestations of innocence, appellant ultimately not only plead guilty. He also admitted guilt. His reliance on *Alford* is therefore misplaced. Contrary to appellant's argument, the fact that he previously denied guilt or stated that he was only pleading for the plea bargain does not trigger a requirement for more evidence than his judicial confessions to support his guilty pleas. *Cardenas v. State*, 403 S.W.3d 377, 381 (Tex. App.—Houston [1st Dist.] 2013), *aff'd*, 423 S.W.3d 396 (Tex. Crim. App. 2014) ("When an appellant has provided a valid judicial confession to all of the elements of the offense, the record need not provide further proof.").

Appellant signed a judicial confession in each case, confirming that he was aware of and understood the consequences of his plea. The judicial confessions were offered without any objection and the appellant offered no other evidence to support his plea. The trial court determined appellant made the confessions voluntarily and knowingly. Thus, appellant's judicial confessions are sufficient to satisfy the evidentiary requirements of article 1.15. *See* Tex. Code Crim. Proc. Ann. art. 1.15 (West 2009); *Breaux v. State*, 16 S.W.3d 854, 855–56 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd) (stating that "[d]ue process does not require a trial judge to enumerate, laundry-list style, every Constitutional right that a defendant possessed and demand that the defendant note for the record his separate waiver of each.").

Accordingly, the record before us demonstrates that appellant's decision to plead guilty was made knowingly and voluntarily and was not a product of judicial coercion.

Because we conclude appellant's plea in each case was made knowingly and voluntarily, appellant was not denied due process of law. For these reasons, based

on the totality of the circumstances, we conclude the trial court did not err in accepting appellant's pleas of guilty. *See Griffin*, 703 S.W.2d at 196.

CONCLUSION

We overrule appellant's sole issue and affirm the judgments of the trial court.

/s/ Tracy Christopher
Justice

Panel consists of Justices Christopher, McCally, and Busby.
Do Not Publish — TEX. R. APP. P. 47.2(b).