Affirmed and Memorandum Opinion filed June 28, 2016.

In The

Fourteenth Court of Appeals

NO. 14-15-00428-CR

ALVIN PINKNEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 122nd District Court
Galveston County, Texas
Trial Court Cause No. 14CR0890

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

Appellant Alvin Pinkney challenges his conviction for evading arrest with a vehicle on the grounds that (1) the evidence is insufficient to support his conviction and (2) the trial court imposed a sentence beyond the statutory maximum. Because appellant pleaded guilty as charged in the indictment and true to an enhancing allegation that elevated the range of punishment for the offense, we affirm.

Background

A grand jury indicted appellant as follows:

> ALVIN PINKNEY, on or about the 17th day of March, 2014 and anterior to the presentment of this indictment in the County of Galveston and State of Texas, did then and there, while using a vehicle, intentionally flee from Officer Johnson, a person the defendant knew was a peace officer who was attempting lawfully to arrest or detain the defendant.
>
> ENHANCEMENT
>
> And it is further presented in and to said Court that, prior to the commission of the aforesaid offense, on the 17th day of May, 2010, in cause number 09CR0507 in the 56th District Court of Galveston County, Texas, the defendant was convicted of the felony offense of robbery.

Appellant signed a document entitled "Written Plea Admonishments – Waivers – Stipulations" in which he pleaded guilty without an agreed recommendation on punishment to this second degree felony. In this document, he acknowledged that he had been charged with "evading arrest detention with vehicle" and that the offense was a second degree felony subject to two to twenty years' confinement and a fine not to exceed $10,000. He further acknowledged that he had been admonished by the court, was aware of the consequences of his plea, was mentally competent, and had made his plea freely and voluntarily. He also waived his right to a jury trial and the right to the "appearance, confrontation, and cross examination of witnesses as to guilt." Appellant confessed his guilt "to having committed each and every element of the offense alleged in the indictment" and agreed and stipulated that "the facts contained in the indictment . . . are true and correct and constitute the evidence in this case." He further pleaded true to the enhancing paragraph. Appellant, his trial counsel, the assistant district attorney, and the trial court all signed appellant's plea documents.

At a hearing, the trial court verbally admonished appellant about the offense and the range of punishment. After confirming appellant's understanding of the charges against him and the range of punishment for this enhanced offense, the State verified that appellant's confession had been freely and voluntarily made and that his signature appeared on the plea papers. The trial court admitted appellant's written plea and judicial confession into evidence. The trial court then accepted appellant's guilty plea and plea of true to the enhancement paragraph on the record and reset the case for a punishment hearing. Following the punishment hearing, the trial court sentenced appellant to eleven years' confinement in the Texas Department of Criminal Justice, Institutional Division. This appeal timely followed.

Analysis

In his first two issues, appellant challenges the sufficiency of the evidence to support his conviction. In his third issue, he asserts that the trial court's sentence of eleven years' confinement exceeded the maximum punishment for the offense for which he was indicted. For the reasons discussed below, we conclude that legally sufficient evidence supports appellant's conviction of felony evading arrest and that his punishment was within the range permitted by the indictment.

Appellant challenges the sufficiency of the evidence to support his conviction under the *Jackson v. Virginia* standard of legal sufficiency. *See* 443 U.S. 307, 313 (1979); *see also Byrd v. State*, 336 S.W.3d 242, 246 (Tex. Crim. App. 2011). But "[t]he *Jackson* standard does not apply when a defendant knowingly, intelligently, and voluntarily enters a plea of guilty or nolo contendere." *Keller v. State*, 125 S.W.3d 600, 605 (Tex. App.—Houston [1st Dist.] 2003), *pet. dism'd, improvidently granted*, 146 S.W.3d 677 (Tex. Crim. App. 2004). Instead, our sufficiency review on appeal of a felony plea of guilty to the

court is confined to determining whether sufficient evidence supports the judgment of guilt under article 1.15 of the Code of Criminal Procedure. *See id.*; Tex. Code Crim. Proc. art. 1.15 (providing that, in a guilty plea before the court, the State must introduce evidence into the record showing the guilt of the defendant). A judicial confession alone meets the requirements of article 1.15 when it embraces every element of the offense charged and establishes the defendant's guilt. *See Breaux v. State*, 16 S.W.3d 854, 857 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).

A person commits third degree felony evading arrest or detention if, while using a vehicle, "he intentionally flees from a person he knows is a peace officer . . . attempting lawfully to arrest or detain him." Tex. Penal Code § 38.04(a), (b). Additionally, when a defendant has previously been finally convicted of a felony other than a state jail felony, on conviction of a third degree felony the "defendant shall be punished for a felony of the second degree." *See id.* § 12.42(a). A felony of the second degree is subject to a range of punishment from two to twenty years' confinement and a fine not to exceed $10,000. *See id.* § 12.33.

In this case, appellant judicially confessed to "each and every element alleged in the indictment" and pleaded true to "the enhancements plead in this cause and not abandoned by the State." As noted above, the indictment alleged that appellant, "while using a vehicle, intentionally fle[d] from Officer Johnson, a person the defendant knew was a peace officer who was attempting lawfully to arrest or detain the defendant," which tracks the elements of third degree felony evading arrest or detention. *See id.* § 38.04(a), (b). The indictment also contained an enhancement indicating appellant had been previously convicted of the felony offense of robbery, which enhanced the punishment range for this offense from a

third degree felony to a second degree felony. *See id.* § 12.42(a). The State introduced evidence of this conviction at the sentencing hearing.

Appellant's judicial confession meets the requirements of article 1.15 because it embraces every element of the charged offense and establishes appellant's guilt. *See Jones v. State*, 373 S.W.3d 790, 792–93 (Tex. App.—Houston [14th Dist.] 2012, no pet.). We thus overrule appellant's challenges to the sufficiency of the evidence.

Additionally, appellant pleaded true to the enhancement, which enhanced the punishment for the charged offense to a second degree felony. *See* Tex. Penal Code § 12.42(a). Appellant's sentence of eleven years is within the range of punishment for the second degree felony offense. *See id.* § 12.33. Because appellant's punishment is within the range of punishment for the offense as charged, his third issue challenging his punishment is without merit. We accordingly overrule this issue.

Conclusion

Having overruled appellant's three issues, the judgment of the trial court is affirmed.

/s/ Sharon McCally
Justice

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