Affirmed and Memorandum Opinion filed June 28, 2016.

In The

Fourteenth Court of Appeals

NO. 14-15-00598-CR

BRITTNEY STILES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 1375316

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

Appellant Brittney Stiles asserts that her right to due process was violated because the trial court "predetermined" her sentence of two years' confinement following an adjudication of guilt. Because the record does not support appellant's claimed due process violation, we affirm.

Background

Appellant entered into an agreement with the State in which she pleaded guilty to the third degree felony offense of assault on a public servant in exchange for a recommendation that she be placed on deferred adjudication community supervision for two years. The trial court signed a deferred adjudication order in accordance with her plea agreement.

The State first moved to adjudicate appellant's guilt roughly fifteen months later when she had failed to (a) report to her community supervision officer for several months, (b) notify the community supervision department of a change of address, (c) perform her community service as ordered, and (d) pay any of her community supervision fees. The trial court amended the conditions of appellant's community supervision, ordering her to participate in a community supervision program called "Change Through Intervention." The State dismissed its motion. The trial court later extended the term of appellant's community supervision by six months and amended other terms of appellant's supervision.

When appellant had about four months of community supervision left to complete, the State again moved to adjudicate appellant's guilt. In the State's motion to adjudicate, the State alleged that appellant failed numerous drug tests, admitted using methamphetamine to her community supervision officer (CSO), failed to report to her CSO, did not provide written verification of employment to her CSO, lied to her CSO about a prescription drug appellant obtained without a prescription, and committed various other violations of the terms and conditions of her community supervision. Appellant signed a judicial confession and stipulation, pleading true to the allegations in the State's motion. In this document, appellant acknowledged that (1) the range of punishment for the charged offense was two to ten years and (2) the court would adjudicate her guilty and determine her

punishment. The trial court held a sentencing hearing that same day.

At the hearing, appellant asked to attend a private drug treatment program that offered both inpatient and outpatient treatment options. Appellant's counsel provided information about this program to the court, as well as other documentary evidence and photographs regarding appellant's living conditions. The State urged, however, that appellant be incarcerated. Appellant testified about what she had learned from being in jail and why she believed she could succeed in the proposed program. After hearing argument from appellant's counsel and the State, the following exchange occurred:

> THE COURT: Ms. Stiles, you did have an evaluation done while you were in custody, the LSI-R?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: And I'm certain that your lawyer explained to you that their recommendation was placement in the Women Helping Ourselves [WHO] program in Atascocita, and that's obviously lockdown in-patient residential treatment and it's six months. And I can only think that these efforts that you're making to go to a 30-day residential or this out-patient, that BES, means that you don't want to go to the WHO program.
>
> I'm uncomfortable with following anything less than the recommendation from the probation department, because my experience is that they are good at what their evaluation is.
>
> You are not before me having just messed up once. I know that you know that. You absconded from probation. I put you on the CTI program where I would have a little more control over it, gave you another chance, and you showed up late and high to CTI, right?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: And so, in fact, I agreed with Mr. Jones that your intentions are good. I think that where you're standing right now, you really want to kick your habit and move forward on your probation.
>
> THE DEFENDANT: Absolutely.

> THE COURT: I believe that you believe that. But I don't believe that wanting it is enough. And so if you want to stay on probation, you have to go to WHO. If you don't want to go to WHO, you can pick and I'll give you 2. But it's up to you.

After explaining that appellant could be placed in the WHO program only if she were in custody and that the wait time was about three weeks for the program, the trial court paused proceedings so that appellant could discuss her options with her counsel. Appellant elected two years' confinement in lieu of remaining on community supervision and entering the WHO program.

The trial court adjudged appellant guilty of assault on a public servant and sentenced appellant to two years' confinement in the Texas Department of Criminal Justice, Institutional Division. This appeal timely followed.

Alleged Due Process Violation

In a single issue, appellant asserts that the trial court violated her right to due process by "predetermining" her sentence in reliance on the recommendation of the community supervision department. We disagree for the following reasons.

We review a trial court's decision on punishment for an abuse of discretion. *Buerger v. State*, 60 S.W.3d 358, 363 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd) (citing *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984)). Generally, when the trial court assesses a sentence within the statutory limits, we will not disturb the sentence on appeal. *See id.* But a trial court denies a defendant due process when it refuses to consider the evidence or when it imposes a predetermined punishment. *Sosa v. State*, 230 S.W.3d 192, 194–95 (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd) (citing *Buerger*, 60 S.W.3d at 364). In the absence of a clear showing of bias, we presume the trial court was neutral and detached. *Id.* (citing *Steadman v. State*, 31 S.W.3d 738, 741–42 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd)).

Appellant asserts that the trial court "clearly had decided before the hearing to impose prison time" and exhibited a "predetermined reliance on probation department recommendation[s]." But nothing in our record indicates that the trial court predetermined appellant's sentence or refused to consider the evidence. *Cf. Howard v. State*, 830 S.W.2d 785, 787–89 (Tex. App.—San Antonio 1992, pet. ref'd) (holding that trial court failed to consider full range of punishment when, in placing appellant on deferred adjudication, trial court threatened to sentence appellant to 99 years as punishment if he violated the terms of probation and trial court later carried out that threat); *Jefferson v. State*, 803 S.W.2d 470, 471–72 (Tex. App.—Dallas 1991, pet. ref'd) (explaining that the trial court predetermined appellant's sentence by promising him, at the time he was placed on deferred adjudication probation, he would be sentenced to 20 years' confinement if he violated the terms of his probation and thereafter sentencing appellant in accordance with that promise). Instead, the record reflects that the community supervision department recommended that appellant be placed into the WHO treatment program. Because appellant had expressed a preference for a shorter, private treatment program, the trial court offered her the option of (a) staying on community supervision and entering the WHO program or (b) incarceration for the statutory minimum for the offense with which she had been charged—two years. *See* Tex. Penal Code § 22.01(a), (b)(1) (assault of public servant is third degree felony); *id.* § 12.34 (third degree felony punishment is a term of imprisonment of two to ten years and a fine not to exceed $10,000). Appellant chose incarceration for two years over remaining on community supervision and being placed in the WHO program.

These facts do not clearly demonstrate that the trial court was biased or in any way predetermined appellant's sentence. Rather, our record reflects that the

trial court reviewed the risk assessment performed on appellant, listened to appellant's testimony, and reviewed the documentation regarding appellant's proposed private treatment facility. *See, e.g.*, *Brumit v. State*, 206 S.W.3d 639, 645–46 (Tex. Crim. App. 2006) (distinguishing cases in which trial court's comments indicated it had not considered a lower sentence or the evidence and holding that trial court's imposition of lengthy sentence after hearing evidence about offense and victim impact testimony did not demonstrate bias); *Yonkers v. State*, 400 S.W.3d 200, 208–09 (Tex. App.—Dallas 2013, pet. ref'd) (concluding that, despite trial court's comment that he leaned towards a higher sentence over a lower one, no bias was shown in sentencing because court heard all the evidence before sentencing the defendant to prison time); *cf. State v. Hart*, 342 S.W.3d 659, 674 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd) ("There is no evidence in the record that reasonably could be found to rebut the presumption that (1) [the trial judge] was neutral and detached in assessing punishment, (2) [the trial judge] considered the full range of punishment, and (3) [the trial judge] made his own independent judgment regarding punishment, rather than assessing a predetermined punishment based on [another judge]'s recommendation."). The trial court considered leaving appellant on community supervision and offered to do so if she attended the WHO six-month inpatient drug treatment program indicated by her risk assessment. Appellant refused that option and elected to serve the minimum statutory sentence for assault on a public servant, the offense to which she had previously pleaded guilty.

In sum, the trial court's rejection of appellant's proffered voluntary drug treatment program does not show the trial court predetermined her sentence or failed to consider the evidence in assessing the minimum sentence permitted for

the offense to which she pleaded guilty. Because appellant has not demonstrated that her right to due process was violated, we overrule her sole issue.

Conclusion

The judgment of the trial court is affirmed.

/s/ Sharon McCally
Justice

Panel consists of Chief Justice Frost and Justices McCally and Brown.
Do Not Publish — Tex. R. App. P. 47.2(b).