Affirmed as Modified in Part, Affirmed in Part, and Memorandum Opinion filed June 13, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-01044-CR
NO. 14-15-01045-CR

LAWRENCE CORRIE STEPHENS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Cause Nos. 59572 & 63684

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

Appellant Lawrence Corrie Stephens appeals the revocation of community supervision and imposition of sentence on his convictions for burglary of a building and failure to appear. Appellant contends (1) the range of punishment was improperly enhanced for each conviction because there is insufficient evidence regarding the degree of the offenses of which he was previously convicted; and (2)

his burglary sentence is illegal because there is insufficient evidence in the record to support a finding that the allegations in the enhancement paragraphs are true. We conclude that appellant may not collaterally attack the punishment range in this revocation appeal, and appellant's plea of true to the enhancements supports the burglary sentence. We therefore affirm.

BACKGROUND

In May 2009, appellant was indicted in cause number 59572 for the state jail felony of burglary of a building. *See* Tex. Penal Code Ann. § 30.02(c)(1). Two prior felony convictions were alleged for purposes of enhancing the punishment range. In August 2009, pursuant to a plea agreement, appellant pled guilty to the offense and pled true to both enhancement paragraphs. The trial court found appellant guilty of burglary of a building (enhanced), as alleged in the indictment, and set his punishment at six years' imprisonment. The court suspended the imposition of sentence and placed appellant on community supervision for four years.

In December 2010, appellant was indicted in cause number 63684 for the third-degree felony of failure to appear in accordance with the terms of his release. *See* Tex. Penal Code Ann. § 38.10(f). The same prior felony convictions alleged in the burglary indictment were alleged again for purposes of enhancing the punishment range. In January 2011, pursuant to a plea agreement, appellant pled guilty to the offense and pled true to both enhancement paragraphs. The trial court found appellant guilty of failure to appear (enhanced), as alleged in the indictment, and set his punishment at six years' imprisonment. The court suspended the imposition of sentence and placed appellant on community supervision for three years, which was later extended for a further three years.

In August 2015, the State petitioned for revocation of appellant's community

supervision in each case, alleging he violated the terms of his supervision by failing to report monthly to the supervision officer at various times in 2014 and 2015.[1] Following a hearing, the trial court revoked appellant's community supervision and sentenced him to five years' imprisonment in the Institutional Division of the Texas Department of Criminal Justice for each offense, with the sentences to run concurrently. This appeal followed.

ANALYSIS

I. Sufficiency of the evidence

In two issues, appellant contends that there is insufficient evidence regarding the prior convictions alleged in the enhancement paragraphs of the indictments, and therefore they do not support the increased range of punishment used by the court in assessing his sentences. Specifically, appellant complains there is insufficient evidence establishing the degree of offense of his prior conviction for possession of a controlled substance, as alleged in the second enhancement paragraph.

Although appellant is appealing from the revocation of his community supervision, he is not challenging the ground for revocation alleged by the State. Rather, he is challenging the original judgments assessing punishment. "In the 'regular' community supervision context, sentence is assessed when a defendant is placed on probation."[2] An original judgment placing a defendant on community

[1] Although these violations appear to fall outside the term of community supervision for the burglary conviction, appellant does not challenge on appeal the ground alleged by the state for revoking his community supervision.

[2] *Wright v. State*, 506 S.W.3d 478, 481 (Tex. Crim. App. 2016) (citing Tex. Code Crim. Proc. art. 42.12, §§ 2(B) (defining regular community supervision to mean the placement of a defendant under programs and sanctions for a period during which "a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part"), 23 (on revocation of regular community supervision, "the judge may proceed to dispose of the case as if there had been no community

supervision generally must be appealed, if at all, within the appellate time periods following rendition of that judgment. *Martinez v. State*, 194 S.W.3d 699, 701 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (citing *Nix v. State*, 65 S.W.3d 664, 667 (Tex. Crim. App. 2001)). "[A] challenge to the initial assessment of sentence in an appeal from the later revocation is a collateral attack on the assessment of sentence" and "is not allowed."[3]

There is an exception to this general rule if the judgment is void, which renders it a nullity and capable of being attacked at any time. *See id*. When an original judgment imposing probation is void, there is no judgment imposing community supervision and therefore nothing to revoke. *Id.* A judgment is void only in very rare situations, however, usually due to the trial court's lack of jurisdiction. *Martinez*, 194 S.W.3d at 701 (citing *Nix*, 65 S.W.3d at 668).

The very nearly exclusive list of situations in which the judgment of conviction is void are those in which: (1) the document purporting to be a charging instrument does not satisfy the constitutional requisites of a charging instrument, and thus the trial court has no jurisdiction over the defendant; (2) the trial court lacks subject-matter jurisdiction over the offense charged, such as when a misdemeanor involving official misconduct is tried in a county court at law; (3) the record reflects that there is no evidence to support the conviction; or (4) an indigent defendant is required to face criminal trial proceedings without appointed counsel, when such has not been waived. *Martinez*, 194 S.W.3d at 701–02 (citing *Nix*, 65 S.W.3d at 668). Appellant fails to argue, let alone establish, that he is entitled to relief under the void-judgment exception. Accordingly, we overrule

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supervision" or may reduce the term of confinement if determined to be in the best interest of society and the defendant)).

[3] *Wright*, 506 S.W.3d at 481.

appellant's second issue in cause number 59572 and his sole issue in cause number 63684.

II. Illegal sentence

In his remaining issue, appellant contends the evidence is insufficient to support a finding that he pled true to the enhancement paragraphs contained within the indictment for burglary of a building, thus rendering his sentence illegal. More specifically, appellant argues there is no evidence in the record that appellant pled true to the enhancements or that the trial court recognized the enhancements as true.

An illegal sentence is one that is not authorized by law. *See Ex parte Parrott*, 396 S.W.3d 531, 534 (Tex. Crim. App. 2013). A sentence outside the range of punishment authorized by law is considered illegal. *Id.*; *Mizell v. State*, 119 S.W.3d 804, 806 (Tex. Crim. App. 2003). Although an illegal sentence is not included in the list of situations in which a judgment is void, an argument that a sentence is illegal may be raised at any time. *See Wright*, 506 S.W.3d at 482 ("'Illegal sentence' was not one of the four situations listed."); *Ex parte Rich*, 194 S.W.3d 508, 513 (Tex. Crim. App. 2006) ("[T]here has never been anything in Texas law that prevented *any* court with jurisdiction over a criminal case from noticing and correcting an illegal sentence," no matter when or how the relief was sought.).

The record shows that appellant was indicted for burglary of a building in cause number 59572, with two prior felony convictions alleged for purposes of enhancing punishment. Burglary of a building is a state jail felony, punishable by confinement for not more than two years or less than 180 days and a fine not to exceed $10,000. *See* Tex. Penal Code Ann. §§ 12.35 (a)–(b), 30.02(c)(1). The punishment range is enhanced to that of a third-degree felony upon a showing that

the defendant has previously been finally convicted of two state jail felonies punishable under section 12.35(a) of the Penal Code. *See* Tex. Penal Code Ann. § 12.425(a). A third-degree felony is punishable by confinement for not more than 10 years or less than 2 years and a fine not to exceed $10,000. *Id.* § 12.34.

Here, two prior felony convictions—one for burglary of a building and one for possession of a controlled substance—were alleged in the indictment. Pursuant to a plea agreement, appellant entered pleas of true to both enhancement paragraphs. Subsequently, the trial court assessed (and suspended) punishment at six years' confinement—well within the legal sentencing range.

We first address appellant's argument the record fails to reflect that appellant pled true to the enhancement paragraphs. During his original plea proceeding, the following exchange occurred on the record:

> THE COURT: And it is alleged in the enhancement paragraphs that you were convicted of a felony of Burglary of a Building on September the 18th of 2000 in Harris County, Texas, and that you were convicted of Possession of a Controlled Substance on June 4th, 2004, in Harris County, Texas. Are those allegations true or not true?
>
> THE DEFENDANT: True.

Thus, contrary to appellant's assertions, the record affirmatively demonstrates appellant entered pleas of true to both enhancement paragraphs alleged in the indictment for his burglary offense. This plea satisfied the State's burden of proof. *Ford v. State*, 243 S.W.3d 112, 117 (Tex. App.—Houston [14th Dist.] 2007, pet. ref'd).

In its judgment, the court pronounced appellant guilty of "BURGLARY OF A BUILDING – ENHANCED," which we conclude suffices as a finding that the enhancements are true. In any event, an implied finding of true is supported by appellant's pleas. *See Torres v. State*, 391 S.W.3d 179, 184 (Tex. App.—Houston

[1st Dist.] 2012, pet. ref'd).

On the record before us, appellant has not shown that his sentence is illegal. We overrule appellant's first issue in cause number 59572.

III. Modification

Finally, we note that the judgment revoking community supervision in cause number 59572 contains a clerical error. The record reflects that appellant was convicted of the offense of burglary of a building, a state jail felony, enhanced for punishment as a third-degree felony. However, the judgment incorrectly lists the degree of offense as third-degree felony. Accordingly, we reform the trial court's judgment to reflect the degree of offense as that of a state jail felony. *See French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992) (stating appellate court has authority to reform a judgment to "speak the truth").

CONCLUSION

Because we hold that the trial court's judgment revoking community supervision in cause number 59572 incorrectly listed the charged offense as a third-degree felony, we modify the judgment to reflect that appellant was convicted of the state jail felony of burglary of a building and otherwise affirm. We affirm the judgment in cause number 63684.

/s/ J. Brett Busby
Justice

Panel consists of Justices Busby, Donovan, and Brown.
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