

Affirmed and Memorandum Opinion filed June 13, 2017.



In The

Fourteenth Court of Appeals

**NO. 14-16-00161-CR
NO. 14-16-00163-CR**

TREVIION D. NAVY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause Nos. 1466916 and 1448312**

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

Appellant Trevion D. Navy was indicted for aggravated robbery (trial court cause number 1448312, appeal number 14-16-00163-CR) and unauthorized use of a motor vehicle (trial court cause number 1466916, appeal number 14-16-00161-CR). He pleaded guilty to both charges. After a presentence investigation, the trial court sentenced him to eight years in prison for aggravated robbery and nine months in state jail for unauthorized use of a motor vehicle. Appellant contends the

trial court abused its discretion in not allowing him to withdraw his guilty pleas. We affirm because appellant did not move to withdraw his plea, and in any event the court would not have abused its discretion in denying such a motion.

BACKGROUND

According to the aggravated robbery complaint, two black males approached the complainant as she was walking home from school on November 6, 2014. One male pointed a gun at the complainant and demanded her backpack. The complainant handed her backpack to the other male. She later positively identified appellant as one of the two males. The record does not indicate whether appellant was the one with the gun or the one who took the backpack. Appellant was arrested for aggravated robbery and released on bond. *See* Tex. Penal Code Ann. § 29.03(a)(2) (West 2011). On May 2, 2015, appellant was arrested for unauthorized use of a motor vehicle. *Id.* § 31.07(a). The record does not provide details about the offense.

Appellant pleaded guilty to both charges on November 23, 2015. He signed a waiver of constitutional rights, agreement to stipulate, and judicial confession in each case admitting he committed the offense as charged. He also signed written admonishments by the trial court about his pleas. The record does not contain a transcript of the plea hearing.

The trial court held a sentencing hearing on February 16, 2016. A presentence investigation report (PSI) was admitted into evidence without objection.¹ Appellant's mother testified on his behalf. She said she believed appellant did not commit the aggravated robbery. She did not testify about his unauthorized use of a motor vehicle. No other evidence was offered at the hearing.

¹ The PSI is not in the appellate record. Neither appellant nor the State rely on the PSI, and it is not relevant to our consideration of the appeals. For that reason, we have not asked the court reporter to supplement the record with the PSI. *See* Tex. R. App. P. 34.6(d).

Following closing arguments, the trial judge found appellant guilty of both charges and said she would sentence him to eight years in prison for aggravated robbery and nine months in state jail for unauthorized use of a motor vehicle. The judge asked if appellant had anything to say. Appellant responded:

I had nothing to do with the aggravated robbery. The reason why I say that, your Honor, at the time when it took place, your Honor, I was nowhere near campus. And the offense report says that the defendant – the witness was walking home that day. At that time, your Honor, I was in the house. I come back to school the next day. I get – I get jammed up for something that I didn't have nothing to do with. The principal tell me that a female said it was a chubby dude with a black hoody that was with another dude that held her at gunpoint.

So, I'd asked her, I'm like, "Man, I didn't have nothing to do with that." You know I don't mess with guns at all. Period. And that's a female. Nothing. I have never harmed no female in my life. I have a sister that goes to that school. That's why I said I don't –

And when I came back, when I bonded out I came back to school. He told me when the female pointed me out, he said she wasn't sure with her choice. She said, "I think that's him." Not knowing that you're taking somebody life and messing it up.

Your Honor, I really didn't do this. I pleaded guilty to take probation so I wouldn't have to be going through this.

The judge said, "You told me to my face under oath that you were pleading guilty," then formally sentenced appellant and remanded him to custody. Appellant did not move for a new trial.

ANALYSIS

I. Legal standards regarding withdrawal of guilty plea

A defendant may withdraw his guilty plea as a matter of right before judgment has been pronounced or the case has been taken under advisement. *Jackson v. State*, 590 S.W.2d 514, 515 (Tex. Crim. App. [Panel Op.] 1979); *Lawal*

v. State, 368 S.W.3d 876, 882 (Tex. App.—Houston [14th Dist.] 2012, no pet.). After the trial court has admonished a defendant, received the plea and evidence, and passed the case for presentence investigation, the case has been taken under advisement. *Lawal*, 368 S.W.3d at 882. Once a case is taken under advisement, withdrawal of a plea is at the trial court’s discretion. *Jackson*, 590 S.W.2d at 515.

II. Appellant did not move to withdraw his guilty pleas.

A complaint must be made to the trial court by a timely and sufficiently specific motion, objection, or request before that complaint may be heard on appeal. *See* Tex. R. App. P. 33.1(a)(a). The clerk’s record does not contain a written motion to withdraw appellant’s pleas. Likewise, the reporter’s record does not reflect an oral motion to withdraw. Because appellant did not make a motion to withdraw his pleas, either before judgment was rendered or in a motion for new trial, he has not preserved any error for appeal. *See Houston v. State*, 201 S.W.3d 212, 216–17 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

III. The trial court would not have abused its discretion in denying withdrawal.

Even if appellant’s statements at the sentencing hearing could be construed as a motion to withdraw his guilty pleas, we conclude the trial court would not have abused its discretion in denying the motion. A guilty plea must be entered into voluntarily and freely. Tex. Code Crim. Proc. Ann. art. 26.13(b); *Houston*, 201 S.W.3d at 217. We must examine the entire record to determine the voluntariness of a plea. *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998) (per curiam). If the trial court properly admonished the defendant before a guilty plea was entered, there is a prima facie showing the plea was both knowing and voluntary. *Id.* The burden then shifts to the defendant to show he pleaded guilty without understanding the consequences of his plea and, consequently, suffered

harm. *Houston*, 201 S.W.3d at 217. Therefore, a defendant who attests during the initial plea hearing that his plea is voluntary bears a “heavy burden” to prove in a subsequent hearing that he entered the plea involuntarily. *Id.* A guilty plea is not involuntary simply because the sentence exceeded what an accused expected, even if that expectation was raised by his attorney. *Hinkle v. State*, 934 S.W.2d 146, 149 (Tex. App.—San Antonio 1996, pet. ref’d).

Appellant signed a judicial confession in each case admitting he committed the crime as charged. The trial court duly admonished him in writing about the consequences of his guilty pleas, including the range of punishment appellant faced. *See* Tex. Code Crim. Proc. Ann. art. 26.13. Those admonishments establish a prima facie case that appellant’s pleas were knowing and voluntary. *Martinez*, 981 S.W.3d at 197. The burden then shifted to appellant to show he pleaded guilty without understanding the consequences of his pleas and suffered harm as a result. *Houston*, 201 S.W.3d at 217.

In this case, the only evidence arguably raising the issue of innocence is appellant’s mother’s testimony that she “truly believe[d] he did not” commit aggravated robbery. Appellant made similar statements before the trial court sentenced him, but he was not under oath and was not subject to cross-examination. *See* Tex. R. Evid. 603 (“Before testifying, a witness must give an oath or affirmation to testify truthfully.”); Tex. R. Evid. 611(b) (permitting cross-examination of a witness on any relevant matter, including credibility). There was no suggestion appellant was innocent of the charge of unauthorized use of a motor vehicle.

A trial court is not required to allow the defendant to withdraw his guilty plea even if evidence fairly raises the issue of innocence. *Moon v. State*, 572 S.W.2d 681, 682 (Tex. Crim. App. 1978) (op. on reh’g); *Houston*, 201 S.W.3d at

219. Likewise, a trial court does not abuse its discretion in denying a motion to withdraw a guilty plea merely because a defendant proclaims innocence at his sentencing hearing. *Saldana v. State*, 150 S.W.3d 486, 488, 490–91 (Tex. App.—Austin 2004, no pet.) (holding trial court did not abuse its discretion in denying motion to withdraw defendant’s guilty plea after defendant unveiled exculpatory scenario during his testimony at PSI hearing); *see also Lawal*, 368 S.W.3d at 882 (holding trial court did not abuse its discretion in denying defendant’s motion to withdraw his guilty plea even when PSI raised an issue of defendant’s innocence); *Fisher v. State*, 104 S.W.3d 923, 924 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (same); *Graves v. State*, 803 S.W.2d 342, 346 (Tex. App.—Houston [14th Dist.] 1990, pet. ref’d) (same).²

For these reasons, we conclude appellant has not satisfied his burden to demonstrate the trial court abused its discretion in not permitting him to withdraw his guilty pleas.

CONCLUSION

We overrule appellant’s sole issue and affirm the judgment of the trial court.

/s/ J. Brett Busby
Justice

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

² Appellant contends *State v. Payne*, 790 S.W.2d 649 (Tex. Crim. App. 1990), shows the trial court abused its discretion by refusing to allow him to withdraw his plea. *Payne* is distinguishable for two reasons. First, the defendant in *Payne* filed a motion to withdraw his plea. Second, the Court of Criminal Appeals did not address the court of appeals’ holding that the trial court erred in refusing withdrawal; rather, it considered only whether such an error was harmless. For these reasons, *Payne* does not undermine the above-cited cases holding that a court does not abuse its discretion in denying withdrawal of a guilty plea when a defendant proclaims innocence at his sentencing hearing.