Affirmed and Memorandum Opinion filed April 4, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00295-CR

RONARD LEE SHORTER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 1443309

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

Appellant Ronard Lee Shorter challenges his conviction for the felony offense of indecency with a child by exposure and his sentence of twenty-five years' incarceration. Appellant asserts the trial court erred (1) by not making oral findings of "true" to the indictment's enhancement paragraphs; and (2) finding him competent to stand trial in the face of his rejection of a purported offer of 365 days in jail for a misdemeanor offense based on the same facts. We affirm.

I. BACKGROUND

Appellant initially faced a misdemeanor charge for indecent exposure. The State refiled the case as the third-degree felony offense of indecency with a child by exposure and dismissed the misdemeanor case. The felony indictment included two enhancements—one for sexual assault of a child and the other for indecency with a child.

Competency Examination

The State and appellant's trial counsel filed a motion to have the Harris County Forensic Psychiatric Services conduct a psychiatric examination of appellant to determine his "present competency to stand trial pursuant to the Texas Code of Criminal Procedure." The trial court ordered the examination. The forensic psychologist who examined appellant concluded that appellant was competent to stand trial.

Plea and Adjudication of Guilt

Appellant pleaded "guilty" to the felony charge. During the plea hearing that followed, appellant orally pleaded "guilty" to the charged offense and "true" to the enhancements without a recommendation on punishment. The trial court admonished him that, with the two enhancements, the range of punishment was incarceration for a minimum of twenty-five years up to life, and a fine not to exceed $10,000.[1] The trial court deferred adjudicating appellant's guilt pending completion of a pre-sentence investigation report.

Appellant also signed a "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession" (the "Stipulation"), in which he stated that "I

[1] We note that the actual range of punishment is incarceration for twenty-five to ninety-nine years, and a fine not to exceed to exceed $10,000.

understand the above allegations and I confess that they are true and that the acts alleged above were committed on July 21, 2014." Appellant further acknowledged that he understood the Stipulation.

Sentencing

At the sentencing hearing, the trial court again noted that it had to assess appellant's punishment at a minimum of twenty-five years in prison due to the two enhancements. The trial court signed the judgment, finding appellant guilty of indecency with a child by exposure, finding that appellant had pleaded "true" to the enhancement paragraphs, finding the enhancement allegations true, and sentencing appellant to twenty-five years' incarceration. Appellant timely appealed his conviction and sentence.

II. ISSUES AND ANALYSIS

A. Did the trial court err by not pronouncing in open court its findings that the enhancement paragraphs are true?

In his first issue, appellant asserts his twenty-five-year sentence exceeds the third-degree-felony punishment range of up to ten years' incarceration. The written judgment reflects that the trial court found the enhancements true, but the trial court did not make oral findings on the record at the sentencing hearing. Therefore, appellant asserts, his twenty-five-year sentence illegally exceeds the ten-year maximum sentence for a third-degree felony.

Appellant did not object to the trial court's failure to make oral findings of "true" on the enhancements, so appellant has not preserved this complaint for appellate review. *See Newby v. State*, 169 S.W.3d 413, 416 (Tex. App.—Texarkana 2005, pet. ref'd) (holding that the appellant waived error by not objecting to the trial court's failure to make an oral pronouncement regarding the punishment enhancement allegations). But, even if appellant had not waived this

issue, we would conclude that the trial court committed no error.

A trial court is not required to make oral pronouncements in finding enhancements true when the trial court assesses punishment. *See Meineke v. State*, 171 S.W.3d 551, 557 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd) (holding that the court was not required to make an oral pronouncement of its findings on the enhancements). Though the better practice is for the trial court to announce orally its enhancement findings before sentencing, the failure to do so does not amount to error as long as the record reflects that the court found the enhancements true and sentenced appellant accordingly. *Meineke*, 171 S.W.3d at 557; *see also Seeker v. State*, 186 S.W.3d 36, 39 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd) (explaining that it is preferable for the trial courts to read the enhancements orally and to find them to be true or not true on the record, a trial court does not err by not doing so); *Garner v. State*, 858 S.W.2d 656, 660 (Tex. App.—Fort Worth 1993, pet. ref'd) (explaining that the better practice is for trial courts to read the enhancements orally and find them to be true or false on the record, but the trial court did not commit error because the court, rather than the jury, assessed punishment).

The record reflects that appellant pleaded "true" to the enhancements at the plea hearing. In the Stipulation, appellant acknowledged that "I understand the above allegations and I confess that they are true and that the acts alleged above were committed on July 21, 2014." *See Torres v. State*, 391 S.W.3d 179, 183 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd) ("Because the allegations included the two enhancement paragraphs, [the appellant's] judicial confession included a confession that the enhancement paragraphs were true."); *see also id.* ("Additionally, a plea of 'guilty' to an indictment containing enhancement allegations constitutes a plea of 'true' to the enhancement allegations."). The trial

court stated in the judgment that it found both enhancement paragraphs true.

Under the judicial presumption of regularity, a reviewing court, absent evidence of impropriety, indulges "every presumption in favor of the regularity of the proceedings and documents in the lower court." *Light v. State*, 15 S.W.3d 104, 107 (Tex. Crim. App. 2000); *see also Jones v. State*, 77 S.W.3d 819, 822 (Tex. Crim. App. 2002) ("[I]n the absence of evidence to the contrary, this Court presumes the regularity of the trial court's judgment and records."). Appellant has not shown that the Stipulation and the judgment are not entitled to a presumption of regularity. *See Simms v. State*, 848 S.W.2d 754, 756 (Tex. App.—Houston [1st Dist.] 1993, pet. ref'd) (rejecting the appellant's argument that the trial court erred by not announcing in open court its finding of true to the enhancement paragraphs because the judgment, which stated the trial court had found the enhancement paragraphs true, was entitled to a presumption of regularity and truthfulness, absent an affirmative showing to the contrary). We thus credit the recitals in the Stipulation and the judgment.

We reject appellant's assertion that the trial court erred by not orally announcing its findings that the enhancement paragraphs are true. Appellant's twenty-five-year sentence is not illegal. We overrule appellant's first issue.

B. Should the trial court have found appellant incompetent to stand trial?

In his second issue, appellant contends that his refusal to accept the State's offer of 365 days in the Harris County jail for the misdemeanor offense should have been disclosed to the psychologist who evaluated him for competency and found appellant competent to stand trial on the felony offense. Appellant points to his alleged pre-trial refusal to accept the State's county-jail offer and asserts that his rejection of this 365-day offer, allegedly in the face of a possible punishment of incarceration of twenty-five years to life in felony court, should have been reason

enough to declare him incompetent to stand trial.

One whose mental condition is such that "he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subject to trial." *Turner v. State*, 422 S.W.3d 676, 688–89 (Tex. Crim. App. 2013) (internal quotations & citations omitted). The Texas Legislature has adopted the constitutional standard for competency to stand trial. *Id.* at 689. Under this standard, a person is incompetent to stand trial if the person does not have (1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding or (2) a rational as well as factual understanding of the proceedings against him. Tex. Code Crim. Proc. art. 46B.003(a) (West 2006). A person "is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence." *Id.* 46B.003(b).

The psychologist who examined appellant tracked the language of article 46B.003(a) in his report, and concluded that appellant was competent to stand trial. Nothing prevented appellant from disclosing the State's county-jail offer for the original misdemeanor and his purported rejection of it to the psychologist. The record does not demonstrate that appellant asked the trial court or anyone else to make this disclosure to the psychologist or that anyone refused a request to do so.[2] Nor does the record reflect that appellant objected that his purported refusal to accept the county-jail offer had not been disclosed to the psychologist. Appellant did not challenge the psychologist's report on the ground that the psychologist was not aware of appellant's purported refusal to accept the county-jail offer. Because appellant did not raise this complaint in the trial court, he has not preserved the

[2] Appellant does not specify who should have disclosed this information to the psychologist.

error for appellate review. *See* Tex. R. App. P. 33.1(a).

Moreover, the only document in the record to support appellant's claim that he turned down the State's county-jail offer is a case reset form for the misdemeanor charge. The form contains the following notation: "Advised Client as to Re-file. Rejected 365d County." Even if we presume for the sake of argument that the reset form establishes that appellant turned down the misdemeanor offer, appellant still could not prevail because he does not cite any evidence in the record showing that appellant knew that he was facing a sentence of twenty-five years to ninety-nine years or life in prison if he turned down the county-jail offer. The record is silent on the reason appellant refused the purported county-jail offer.

Thus, even if appellant had not waived his second issue by failing to preserve error in the trial court, the complaint would provide no basis for appellate relief. We overrule appellant's second issue.

We affirm the trial court's judgment.

/s/ Kem Thompson Frost
Chief Justice

Panel consists of Chief Justice Frost and Justices Brown and Jewell.
Do Not Publish — TEX. R. APP. P. 47.2(b).