In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00490-CR

JAMAAL CLARENCE STATEN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 99797

MEMORANDUM OPINION

Jamaal Clarence Staten appeals from the trial court's revocation of his deferred adjudication in a case in which Staten had originally been charged with possessing marijuana. After revoking Staten's community supervision, the trial court sentenced him in absentia. We abate this appeal and remand it to the trial court to pronounce sentence in Staten's presence.

Background

After reaching a plea bargain agreement, Staten pled "no contest" to possession of marijuana. After the trial court found the evidence sufficient to find Staten guilty, it

deferred further proceedings, placed Staten on community supervision for two years, and assessed a fine of $500.

Subsequently, the State filed a motion to revoke Staten's unadjudicated community supervision, alleging that Staten had violated a condition of his community supervision by committing another offense.[1] When the trial court conducted the revocation hearing, Staten failed to appear. In Staten's absence, the trial court conducted the hearing, found that Staten had violated a condition of his community supervision, found him guilty of possessing marijuana, and then proceeded to assess Staten's punishment at two years of confinement.

Staten contends in his first issue that the trial court violated his constitutional and statutory rights to due process and fundamental fairness by proceeding in his absence to revoke his community supervision. In his second issue, Staten contends that the evidence was insufficient to revoke his community supervision and to adjudicate his guilt.

The State acknowledges that Staten was sentenced in absentia. However, the State asserts that Staten "obstreperously refused to be present at the proceedings despite proper notice[.]" The State concludes that because Staten "created his absence in court through his own conduct[,]" he "should not be allowed to benefit thereby on appeal."

[1]In appellate cause number 09-09-00491-CR, Staten appeals his conviction for aggravated assault, which is the offense he is alleged to have committed that the State used to prove that Staten violated a condition of his community supervision. We address that appeal in a separate opinion. However, as the trial court heard the State's motion to revoke on the same day Staten's aggravated assault trial ended, we took judicial notice of the appellate record in cause number 09-09-00491-CR for purposes of this appeal. *See* TEX. R. EVID. 201.

Jurisdiction

Although neither party raises this issue on appeal, we must determine whether the trial court's pronouncement of Staten's sentence without his presence deprives this Court of jurisdiction. *See State v. Roberts*, 940 S.W.2d 655, 657 (Tex. Crim. App. 1996), *overruled on other ground by State v. Medrano*, 67 S.W.3d 892, 894 (Tex. Crim. App. 2002) (holding that jurisdiction is fundamental and that each court may *sua sponte* address the issue); *see also* TEX. CODE CRIM. PROC. ANN. art. 42.03 § 1(a) (Vernon Supp. 2009) (requiring that the trial court pronounce the defendant's sentence in the presence of the defendant).

Several courts have considered whether the defendant's absence at his sentencing hearing deprives an appellate court of jurisdiction to review the trial court's sentence in circumstances like those present here. In *Meachum v. State*, the Fourteenth Court of Appeals discussed whether the defendant's absence at his sentencing hearing deprived it of jurisdiction over Meachum's appeal. 273 S.W.3d 803 (Tex. App.–Houston [14th Dist.] 2008, no pet.). The *Meachum* Court first noted that "[a] criminal sentence is a prerequisite to appellate jurisdiction." *Id.* at 804 (citing *Casias v. State*, 503 S.W.2d 262, 265 (Tex. Crim. App. 1973)). The *Meachum* Court concluded that for an appellate court to extend appellate jurisdiction over a criminal appeal, "the defendant must be sentenced as defined under the Code of Criminal Procedure." *Id.* Additionally, we note that the *Meachum* Court considered whether the 1981 amendments to the Code of Criminal Procedure, which moved the requirement of pronouncing sentence in the defendant's presence from article 42.02 to article 42.03, made the oral pronouncement of sentence in

defendant's absence non-jurisdictional error. *Id.* at 804-05; *see also* Act of June 1, 1981, 67th Leg., R.S., ch. 291, §§ 112, 113, 1981 Tex. Gen. Laws 761, 809. However, after considering the argument that the error had not deprived it of jurisdiction, the *Meachum* Court concluded that "we lack jurisdiction over appellant's appeal based on the trial court's failure to pronounce the sentence in appellant's presence." *Meachum*, 273 S.W.3d at 806.

In *Casias*, an opinion by the Court of Criminal Appeals decided prior to the 1981 amendments that were considered in *Meachum*, the Court likewise concluded that the pronouncement of sentence in the defendant's absence deprived the appellate court of jurisdiction to review the defendant's appeal. 503 S.W.2d at 264-65 (applying the definition of "sentence" found in the then current article 42.02 of the Code of Criminal Procedure, which required pronouncing the sentence in the presence of the defendant).

In previous opinions, this Court has concluded that the oral pronouncement of sentence in the defendant's presence is required in order to vest jurisdiction with us for purposes of the defendant's appeal. *See Wagstaff v. State*, No. 09-06-162-CR, 2007 Tex. App. LEXIS 6464, at *7 (Tex. App.–Beaumont May 11, 2007, no pet.) (abating and remanding case to trial court to allow for sentencing in the presence of the defendant where an indeterminate sentence was given in open court). We conclude that we lack jurisdiction over Staten's appeal because the trial court failed to pronounce his sentence in his presence.

In light of the jurisdictional hurdle created by the trial court's failure to pronounce Staten's sentence in his presence, we now consider the proper disposition of Staten's

appeal. The Rules of Appellate Procedure require that we not dismiss an appeal if the trial court's erroneous action or failure to act can be corrected by the trial court. *See* TEX. R. APP. P. 44.4. Staten's absence from the sentencing hearing can be corrected by the trial court pronouncing its sentence with Staten present. Accordingly, we abate this appeal and remand the cause to the trial court to allow the trial court to pronounce its sentence in open court and with Staten present. *See Meachum*, 273 S.W.3d at 806 (discussing abatement as a proper and efficient remedy) (citing TEX. R. APP. P. 44.4; *Thompson v. State*, 108 S.W.3d 287, 290-91 (Tex. Crim. App. 2003)).

Conclusion

We abate the appeal and remand the cause to the trial court. Upon remand, the trial court shall cause notice of a hearing to be given and, thereafter, pronounce the sentence in Staten's presence. A court reporter's record of the sentencing shall be prepared and filed in the record of this appeal, together with a supplemental clerk's record containing the trial court's judgment. The appeal will be reinstated when the supplemental records are filed. Upon reinstatement, this Court will consider the merits of the issues raised in Staten's brief.

APPEAL ABATED AND CAUSE REMANDED.

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HOLLIS HORTON
Justice

Submitted on June 16, 2010
Opinion Delivered July 7, 2010
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Before McKeithen, C.J., Kreger and Horton, JJ.