In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00125-CR
NO. 09-11-00126-CR

MICHAEL KEITH JOHNSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 97836 and 97838

MEMORANDUM OPINION

Michael Keith Johnson entered agreed pleas to two possession of controlled substance charges, one a state jail felony and the other a third degree felony.[1] In both cases, the trial court deferred adjudication of Johnson's guilt and placed him on

[1]The indictment connected with Johnson's state jail felony alleges that Johnson possessed methamphetamine in the amount of less than one gram. *See* Tex. Health & Safety Code Ann. §§ 481.102(6); 481.115(b) (West 2010). The indictment connected with Johnson's third degree felony alleges that Johnson possessed 3,4-methylenedioxy Methamphetamine (MDMA) in the amount of at least one gram but less than four grams. *See* Tex. Health & Safety Code Ann. §§ 481.103(a); 481.116(c) (West 2010).

community supervision for five years. Subsequently, the State filed motions to revoke Johnson's unadjudicated community supervision. The trial court held an evidentiary hearing on the motions to revoke, found that Johnson had violated its community supervision orders, assessed a sentence of eighteen months in the state jail felony, cause number 97836, and assessed a sentence of two years imprisonment in connection with his conviction on the third degree felony, cause number 97838.

In a single issue in each appeal, Johnson contends he was denied a complete appellate record even though he complied with all requirements to secure a complete record. However, Johnson's counsel does not define how the absence of the records of these hearings would provide Johnson with arguable issues in these appeals. Instead, Johnson's counsel argues that if Johnson's sentences were predetermined, the records of these additional hearings could provide evidence supporting such an argument; or, that if Johnson's sentences had been the product of oral plea agreements that he made when pleading guilty, it is possible that the sentences the trial court imposed after adjudicating Johnson's guilt exceeded the ones to which he had agreed when pleading guilty. Nevertheless, nothing in Johnson's sentencing hearings reflects that Johnson complained that he was receiving a predetermined sentence, or that the sentences the trial court imposed violated any plea agreement.

In the trial court, counsel timely filed written designations of the records. Attached to each designation is a copy of counsel's written request to the official reporter

for the preparation and filing of the complete reporter's record in each case. The reporter's records on appeal contain only the records from the hearings on the "Motion to Revoke Probation[,] Plea of True & Sentencing." The records of the plea hearings and of the hearings that led the trial court to place Johnson on deferred adjudication have not been filed.

"[A] defendant placed on deferred adjudication community supervision may raise issues relating to the original plea proceeding, such as evidentiary sufficiency, only in appeals taken when deferred adjudication community supervision is first imposed." *Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999). By Texas statute, an appellate court's review of an order adjudicating guilt ordinarily is limited to whether the trial court abused its discretion in determining that the defendant violated the terms of his community supervision. *See* Tex. Code Crim. Proc. Ann. art. 42.12, § 5(b) (West Supp. 2010); *see also Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *Antwine v. State*, 268 S.W.3d 634, 636 (Tex. App.—Eastland 2008, pet. denied). Except in limited circumstances, the original plea cannot be attacked on an appeal of the revocation proceedings. *See Nix v. State*, 65 S.W.3d 664, 667-68 (Tex. Crim. App. 2001) (applying limitations on appeals to cases of deferred adjudication); *see also Daniels v. State*, 30 S.W.3d 407, 408 (Tex. Crim. App. 2000) ("Pursuant to *Manuel*, the reporter's record from the original deferred adjudication proceeding is not necessary to this appeal's resolution since appellant cannot now appeal any issues relating to the original deferred

adjudication proceeding."). At the motion to revoke hearings and the sentencing hearings, Johnson did not object to the process, and he did not complain that the trial court had determined, before the sentencing hearings, the length of the sentences it intended to impose. Nor did Johnson complain that the trial court's sentences exceeded the terms of any plea agreement. To the extent that Johnson now seeks to raise these claims, they have not been preserved for appellate review. *See* Tex. R. App. P. 33.1. We conclude that Johnson has not raised an arguable issue as to why he would need to have the reporter's records from the hearings conducted in connection with his guilty pleas and his placement on deferred adjudication to raise issues that concern his revocation hearings. *See Daniels*, 30 S.W.3d 408. Accordingly, we overrule Johnson's sole issue and affirm the trial court's judgments in cause numbers 97836 and 97838.

AFFIRMED.

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HOLLIS HORTON
Justice

Submitted on August 4, 2011
Opinion Delivered August 24, 2011
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.