

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-12-00075-CR
NO. 09-12-00076-CR

DEAION JENKINS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause Nos. 09-07955 and 09-07956

MEMORANDUM OPINION

Pursuant to plea bargain agreements, appellant Deaion Jenkins pleaded guilty to two charges of burglary of a habitation. In both cases, the trial court found the evidence sufficient to find Jenkins guilty, but deferred further proceedings, placed Jenkins on community supervision for ten years, and assessed a fine of \$1,000. The State subsequently filed a motion to revoke Jenkins’s unadjudicated community supervision in each case. Jenkins pleaded “true” in each case to twelve violations of the conditions of his community supervision. In both cases, the trial court found that Jenkins violated the

conditions of his community supervision, found Jenkins guilty of burglary of a habitation, and assessed punishment at ten years of confinement.

In trial cause number 09-07955, the trial court's judgment ordered Jenkins to pay restitution in the amount of \$6700, and in trial cause number 09-07956, the trial court's judgment ordered Jenkins to pay restitution in the amount of \$200. Neither judgment reflects an assessment of a fine on its face; however, the appellate record in trial cause number 09-07955 includes a "revocation restitution/reparation balance sheet[.]" Said balance sheet indicates that the total administrative balance of \$2980 (the sum of the administrative fees and court costs assessed in the judgment) included a \$1000 fine.

In trial cause number 09-07955, Jenkins raises three appellate issues related to the imposition in the written judgment of a fine that was not orally pronounced at sentencing. In both cases, Jenkins raises four issues concerning the restitution requirement in both judgments, since restitution was not orally pronounced at sentencing. The State confesses error with respect to the restitution in both cases, as well as with respect to the imposition of a fine in trial cause number 09-07955. We affirm the trial court's judgments in both cases as modified.

The trial court called the cases together and pronounced sentence in both cases simultaneously. The trial court stated as follows, in pertinent part:

I now find you guilty beyond a reasonable doubt in each of these burglaries of homes that you pleaded guilty to and were placed on probation. You are hereby sentenced in each case to confinement in the Institutional Division

of the Texas Department of Criminal Justice to serve a term of 10 years in each case.

The trial court did not include restitution or a fine in its oral pronouncement.

“[S]entence shall be pronounced in the defendant’s presence.” Tex. Code Crim. Proc. Ann. art. 42.03, § 1(a) (West Supp. 2011).¹ The judgment, including the sentence assessed, is merely the written declaration and embodiment of the trial court’s oral pronouncement. *Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004) (footnote omitted). When the oral pronouncement of sentence and the sentence in the written judgment differ, the oral pronouncement controls. *Id.* Because a fine is a form of punishment, it cannot be included in the written judgment of conviction unless it was included in the oral pronouncement of sentence. *Id.* at 500-02. Likewise, restitution is a form of punishment; therefore, restitution cannot be included in the written judgment of conviction unless it was included in the oral pronouncement of sentence. *Weir v. State*, 278 S.W.3d 364, 366 (Tex. Crim. App. 2009); *Ex parte Cavazos*, 203 S.W.3d 333, 338 (Tex. Crim. App. 2006); *Sauceda v. State*, 309 S.W.3d 767, 769 (Tex. App.—Amarillo 2010, pet. ref’d).

As previously stated, the trial court did not include a fine or restitution in its oral pronouncement in either case. We sustain Jenkins’s issues. Therefore, in trial cause number 09-07955, we modify the judgment to remove the \$1000 fine reflected on the

¹ Because the amendments to article 42.03 are not material to this case, we cite to the current version.

balance sheet by deleting “\$2299.00” from the section of the judgment entitled “Administrative Fees[.]” and substituting “\$1299.00” in its place, and we also delete “\$6700” from the section entitled “Restitution[.]” In trial cause number 09-07956, we modify the judgment by deleting “\$200.00” from the section entitled “Restitution[.]” As modified, we affirm the judgments in both cases.

AFFIRMED AS MODIFIED.

STEVE McKEITHEN
Chief Justice

Submitted on May 15, 2012
Opinion Delivered May 23, 2012
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Before McKeithen, C.J., Gaultney and Horton, JJ.