

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00128-CR

TRENTON RAY SIMS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 258th District Court
Polk County, Texas
Trial Cause No. 23358

MEMORANDUM OPINION

Trenton Ray Sims appeals his conviction for failing to register as a sex offender. In two appellate issues, Sims argues that the trial court's judgment placing him on deferred adjudication community supervision is void because his guilty plea was involuntary, and that upon revocation, the trial court imposed an illegal sentence. We affirm the trial court's judgment.

BACKGROUND

The State charged Sims with failing to register as a sex offender, a third-degree felony. *See* Tex. Code Crim. Proc. Ann. art. 62.102(b)(2) (West Supp. 2015).¹ The indictment alleged three prior felony convictions for failing to register as a sex offender and one prior felony conviction for forgery as enhancements. According to the language in the indictment, Sims’s punishment range was enhanced under section 12.42(d) of the Texas Penal Code, which provides a punishment range of twenty-five to ninety-nine years or life for habitual offenders. *See* Tex. Penal Code Ann. § 12.42(d) (West Supp. 2015).²

Sims pleaded guilty to failing to register as a sex offender and pleaded “true” to two of the enhancement paragraphs, each alleging that Sims had a prior felony conviction for failing to register as a sex offender. During the plea proceeding, the trial court admonished Sims that the State was enhancing his case to habitual and that the range of punishment for the offense was not less than twenty-five years nor more than ninety-nine years or life in prison and a fine of \$10,000. Sims’s counsel also explained to Sims that because of his prior convictions, the State was

¹We cite to the current version of the statute because the subsequent amendment does not affect the issue on appeal.

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enhancing his case to habitual and Sims was facing a minimum sentence of twenty-five years in prison if the trial court revoked his probation. As part of Sims's plea bargain agreement, Sims would not be subject to the enhancement paragraphs unless his deferred adjudication community supervision was revoked. In accordance with the plea bargain agreement, the trial court placed Sims on deferred adjudication community supervision for a period of ten years for the third-degree felony offense of failing to register as a sex offender and assessed a \$2,000 fine.

Subsequently, the State filed a motion to adjudicate guilt alleging that Sims violated a condition of his community supervision. Sims pleaded "[n]ot true." After conducting a hearing, the trial court found that Sims violated a condition of his community supervision, revoked his deferred adjudication community supervision, found Sims guilty of failing to register as a sex offender, and assessed punishment, enhanced by Sims's two prior felony convictions for failing to register, at twenty-five years in prison. Sims appeals the trial court's judgment.

ISSUES

In issue one, Sims contends the trial court's original deferred adjudication order placing him on community supervision is void because he did not freely and voluntarily enter a guilty plea. According to Sims, he was not aware of the consequences of his guilty plea because the trial court and his trial counsel misled

him regarding the correct range of punishment that he faced upon revocation. Sims argues that his trial counsel rendered ineffective assistance that was equivalent to having no counsel at all and that the deferred adjudication order is void. Sims acknowledges the general rule that he cannot attack his original plea proceeding upon the revocation of his community supervision, but he argues that his case falls under the void judgment exception set forth in *Nix v. State*, 65 S.W.3d 664, 667-68 (Tex. Crim. App. 2001).

A defendant placed on deferred adjudication community supervision may raise issues related to the original plea proceeding 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). The Court of Criminal Appeals has recognized the void judgment exception to this prohibition. *Nix*, 65 S.W.3d at 667-68; *Jordan v. State*, 54 S.W.3d 783, 785 (Tex. Crim. App. 2001). “The void judgment exception recognizes that there are some rare situations in which a trial court’s judgment is accorded no respect due to a complete lack of power to render the judgment in question.” *Nix*, 65 S.W.3d at 667. A judgment of conviction for a crime is void in very rare situations and is usually due to a lack of jurisdiction. *Id.* at 668. “An ‘involuntary plea’ does not constitute one of those rare situations.” *Jordan*, 54 S.W.3d at 785 (citing *Custis v. U.S.*, 511 U.S. 485, 496-97 (1994))

(stating that claims concerning ineffective assistance of counsel and the voluntariness of guilty pleas do not rise to the level of a jurisdictional defect resulting from the failure to appoint counsel at all)).

Sims's claims concerning ineffective assistance of counsel and the voluntariness of his guilty plea do not rise to the level of a jurisdictional defect that could render his original judgment of conviction void. *See Nix*, 65 S.W.3d at 668-69. Because Sims has failed to allege an error that renders his original order of deferred adjudication void, he is not entitled to relief under the void judgment exception to the general rule. *See id.*; *see also Jordan*, 54 S.W.3d at 785. We overrule issue one.

In issue two, Sims argues that upon revoking his community supervision, the trial court imposed an illegal sentence because his punishment range was improperly enhanced. According to Sims, punishment under the sex offender registration laws is not subject to enhancement as a habitual offender under section 12.42(d) of the Texas Penal Code. *See Tex. Penal Code Ann. § 12.42(d)*. Sims contends the correct range of punishment with his two prior convictions for failing to register as a sex offender is for a second-degree felony under article 62.102(c) and not as a habitual offender under section 12.42(d).

A sentence that is outside the range of punishment is unauthorized by law and therefore illegal. *Mizell v. State*, 119 S.W.3d 804, 806 (Tex. Crim. App. 2003). A defendant may obtain relief from an illegal sentence on direct appeal. *Id.* Sims argues that his sentence is illegal because the trial court improperly used section 12.42(d) to enhance his punishment instead of article 62.102(c), which provides a specific punishment enhancement section that controls how the trial court can use his prior convictions for failing to register as a sex offender. *See* Tex. Gov't Code Ann. § 311.026(b) (West 2013) (stating that if a conflict between a general provision and special provision is irreconcilable, the special provision prevails).

We reject Sims's argument that there is an irreconcilable conflict between article 62.102(c) and section 12.42(d) and that article 62.102(c) should prevail. Article 62.102(c) provides for enhancement of punishment to the next highest felony when the defendant has one prior conviction for failing to register, while section 12.42(d) provides for enhancement if the defendant has two prior felony convictions. *Compare* Tex. Code Crim. Proc. Ann. art. 62.102(c), *with* Texas Penal Code Ann. § 12.42(d). Although Sims's punishment for failing to register could have been enhanced under article 62.102(c), the record shows that article 62.102(c) is not implicated in this case because Sims's punishment was not enhanced by just one conviction for failing to register. Article 62.102 does not provide a specific

punishment enhancement for a habitual offender who has more than one prior felony conviction for failing to register. *See* Tex. Code Crim. Proc. Ann. art. 62.102. Because Sims had two felony convictions for failing to register, the State elected to enhance Sims's punishment under section 12.42(d) of the Penal Code, which provides punishment enhancement for a defendant who has been finally convicted of two felony offenses. *See* Tex. Penal Code Ann. § 12.42(d).

We also reject Sims's argument that article 62.102(c) precludes the application of section 12.42(d) to enhance his punishment. Nothing in article 62.102 suggests that it is the exclusive provision governing punishment enhancement for a conviction for failure to register as a sex offender. *Barker v. State*, 335 S.W.3d 731, 738 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd); *see Reyes v. State*, 96 S.W.3d 603, 605 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd) (concluding that the former version of article 62.102(c) provided a very specific exception to the general enhancement statute, but did not otherwise preclude the application of section 12.42(d)). We conclude that the enhancement of Sims's punishment under section 12.42(d) of the Penal Code did not result in an illegal sentence. We overrule issue two. Having overruled both of Sims's issues on appeal, we affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on May 2, 2016
Opinion Delivered May 25, 2016
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Before McKeithen, C.J., Kreger and Horton, JJ.