

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00172-CR

ROGER IDROGO JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 253rd District Court
Liberty County, Texas
Trial Cause No. CR31312

MEMORANDUM OPINION

Appellant Roger Idrogo Jr. pleaded guilty to the offense of possession of a firearm by a felon, and the trial court assessed punishment at twenty years of confinement. In his sole issue, Idrogo argues that his sentence exceeds the statutory maximum. We affirm the trial court's judgment.

The original indictment charged Idrogo with possession of a firearm by a felon and included an enhancement paragraph as well as a paragraph that alleged Idrogo is an habitual offender. By agreement, the State abandoned the habitual paragraph

and proceeded on an amended indictment that contained only one enhancement paragraph, which alleged that prior to commission of the charged offense, Idrogo had been convicted of aggravated robbery with a deadly weapon. After being admonished by the trial court that he was pleading guilty to both the offense and the enhancement allegation, which would result in imprisonment for between two and twenty years, Idrogo pleaded guilty to the charged offense as well as to the sole enhancement paragraph. After hearing punishment evidence, the trial court assessed punishment at twenty years of confinement. Idrogo then filed this appeal, in which he argues that his twenty-year sentence exceeds the maximum authorized by statute. Specifically, Idrogo complains that because the trial judge did not recite that he found the enhancement allegation to be true before he pronounced Idrogo's sentence, enhancing his sentence was improper.

“[S]entence shall be pronounced in the defendant's presence.” Tex. Code Crim. Proc. Ann. art. 42.03, § 1(a) (West Supp. 2016).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). When the oral pronouncement of sentence and the written judgment differ,

¹Because the amendments to the statute do not affect this appeal, we cite to the current version of the statute.

the oral pronouncement controls. *Id.* A trial court is not required to make an oral pronouncement of its findings as to enhancement allegations. *Meineke v. State*, 171 S.W.3d 551, 557 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd). We presume the regularity of judgments absent proof that the recitations in the judgment are incorrect. *See Johnson v. State*, 72 S.W.3d 346, 349 (Tex. Crim. App. 2002). The trial court's judgment reflects that it found the enhancement allegation true, and the trial court was not required to orally pronounce its findings as to the enhancement allegation. *See Meineke*, 171 S.W.3d at 557. The trial court's silence regarding its findings as to the enhancement allegation does not conflict with the written judgment. We conclude that the trial court was authorized to enhance Idrogo's punishment. *See Taylor*, 131 S.W.3d at 500; *Johnson*, 72 S.W.3d at 349; *Meineke*, 171 S.W.3d at 557.

Section 46.04(a)(2) of the Texas Penal Code provides that, after the fifth anniversary of the defendant's release from confinement after a felony conviction, possession of a firearm by a felon at any location other than the premises where he lives is unlawful. Tex. Penal Code Ann. § 46.04(a)(2) (West 2011). Section 46.04(e) provides that the offense is a third-degree felony. *Id.* § 46.04(e). Section 12.42(a) of the Texas Penal Code provides that “[i]f it is shown on the trial of a felony of the third degree that the defendant has previously been finally convicted of a felony

other than a state jail felony . . . , on conviction the defendant shall be punished for a felony of the second degree.” *Id.* § 12.42(a) (West Supp. 2016).²

As discussed above, Idrogo pleaded guilty to the third-degree felony offense of possession of a firearm by a felon. *See* Tex. Penal Code Ann. § 46.04(a)(2), (e). In addition, Idrogo pleaded true to the enhancement paragraph that alleged he had been convicted of aggravated robbery with a deadly weapon on January 27, 2000. Therefore, section 12.42(a) provided that Idrogo would be punished for a second-degree felony. *Id.* § 12.42(a). A second-degree felony is punishable by imprisonment for any term of not more than twenty years or less than two years and a fine not to exceed \$10,000. *Id.* § 12.33 (West 2011). The twenty-year sentence assessed by the trial court in Idrogo’s case does not exceed the maximum sentence authorized by statute. *See id.* §§ 12.33, 12.42(a), 46.04(a)(2), (e). Accordingly, we overrule Idrogo’s sole issue and affirm the trial court’s judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

²Because the amendments to the statute do not affect this appeal, we cite to the current version of the statute.

Submitted on March 6, 2017
Opinion Delivered March 15, 2017
Do Not Publish

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