In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-16-00327-CR
NO. 09-16-00328-CR

RAYMOND LINDSEY JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 9th District Court
Montgomery County, Texas
Trial Cause No. 15-11-12545-CR (Counts 1 and 2)

MEMORANDUM OPINION

In two cases on appeal, appellant Raymond Lindsey Jr. complains that the trial court erred by enhancing his punishment as a habitual felony offender because the State failed to prove the evidentiary requirements of section 12.42(d) of the Texas Penal Code. *See* Tex. Penal Code Ann. § 12.42(d) (West Supp. 2016). We affirm the trial court's judgments.

BACKGROUND

In a two-count indictment, a grand jury charged Lindsey with retaliation and assault on a public servant, both third-degree felonies. Prior to trial, the State filed a notice of intent to use enhancement paragraphs during the punishment phase. Lindsey pleaded "[n]ot guilty[]" to both counts, and the case proceeded to trial. In count one, a jury found Lindsey guilty of retaliation. In count two, the jury found Lindsey guilty of assault on a public servant.

On both counts, Lindsey elected to have the trial court assess his punishment. The trial court arraigned Lindsey on the enhancement paragraphs. In Enhancement Paragraph A, the State alleged that in January 2001, Lindsey was convicted in Black Hawk County, Iowa, of the felony offense of domestic abuse assault with intent to inflict serious injury. In Enhancement Paragraph B, the State alleged that in December 1994, Lindsey was convicted in Peoria County, Illinois, of the felony offense of unlawful possession of a stolen vehicle. In Enhancement Paragraph C, the State alleged that in May 1989, Lindsey was convicted in Peoria County, Illinois, of the felony offense of burglary. Lindsey pleaded "true" to the Illinois convictions in Enhancement Paragraphs B and C.

During punishment, the trial court admitted, without objection, exhibits containing certified copies of the Iowa and Illinois judgments. Specifically, exhibits

thirty-one and thirty-two include certified copies of the Illinois judgments to which Lindsey pleaded "true." The Illinois judgments in exhibit thirty-one show that Lindsey was found guilty of the class two felony offense of burglary, sentenced to probation for three years, charged with violating his probation, found guilty of violating his probation, and in May 1989, was sentenced to imprisonment at the Department of Corrections of Illinois for a term of three years or until discharged by law. The Illinois judgment in exhibit thirty-two shows that in December 1994, Lindsey was found guilty of the class two felony offense of unlawful possession of a stolen vehicle and sentenced to imprisonment at the Department of Corrections of Illinois for a term of four years or until discharged by law. Further, the record shows that Lindsey's second Illinois conviction for unlawful possession of a stolen vehicle occurred after the first Illinois conviction for burglary became final.

Exhibit thirty-three includes a certified copy of the Iowa judgments to which Lindsey pleaded "not true." The Iowa judgments show that in October 1999, Lindsey was found guilty of domestic abuse assault with the intent to inflict serious bodily injury and sentenced to probation for a period of two years. The Iowa judgments further show that in January 2001, Lindsey's probation was revoked, and Lindsey was committed into the custody of the Director of the Department of Corrections for a term of imprisonment not to exceed two years. Further, Lindsey's Iowa conviction

for domestic abuse assault with the intent to inflict serious bodily injury occurred after Lindsey's second Illinois conviction for possession of a stolen vehicle became final.

The trial court found all three of the enhancement paragraphs to be "true." In both counts one and two, the trial court sentenced Lindsey to forty years in prison and ordered the sentences to run concurrently.

ANALYSIS

In issue one, Lindsey argues that his enhanced sentences as a habitual felony offender are not supported by legally sufficient evidence because the State failed to prove under section 12.41 of the Texas Penal Code that the out-of-state convictions are third-degree felonies. *See* Tex. Penal Code Ann. §§ 12.41(1) (West 2011), 12.42(d) (West Supp. 2016). In issue two, Lindsey argues that his forty-year enhanced sentence in each case is void because the enhanced sentences exceed the legally authorized punishment range for a third-degree felony. *See id.* § 12.34 (West 2011).

Section 12.42(d) of the Texas Penal Code provides that if it is shown on the trial of a felony offense, other than a state jail felony, that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous

conviction having become final, on conviction the defendant shall be punished by imprisonment for life, or for any term of not more than ninety-nine years or less than twenty-five years. *Id.* § 12.42(d). An out-of-state conviction is considered a felony of the third degree if imprisonment in the Texas Department of Criminal Justice or another penitentiary is affixed to the offense as possible punishment. *Id.* § 12.41(1). Whether an out-of-state offense constitutes a felony for purposes of enhancement is a question of law that we review *de novo*. *See State v. Richardson*, 439 S.W.3d 403, 404 (Tex. App.—Fort Worth 2014, pet. ref'd). This Court has applied section 12.41 to out-of-state convictions for enhancement purposes. *See Golden v. State*, 874 S.W.2d 366, 368 (Tex. App.—Beaumont 1994, pet. ref'd). When it is clear on the face of the out-of-state document that an appellant was incarcerated in a penitentiary for a conviction in that state, the evidence of those convictions is sufficient for enhancement purposes. *See id.*

As stated above, the State introduced, and the trial court admitted into evidence the Illinois judgments to which Lindsey pleaded "true." The Illinois judgments each establish that Lindsey was sentenced to imprisonment in the Illinois Department of Corrections, the state's penitentiary. Because it is clear on the face of the out-of-state documents that Lindsey was incarcerated in an Illinois penitentiary for his convictions of unlawful possession of a stolen vehicle and burglary, we

conclude that the State produced sufficient evidence to establish that the prior Illinois convictions were felonies of the third degree for purposes of enhancement. *See Golden*, 874 S.W.2d at 368; *see also* Tex. Penal Code Ann. § 12.41(1). We further conclude that the trial court properly considered Lindsey's Illinois convictions as third-degree felonies when assessing Lindsey's applicable punishment range, and that Lindsey's enhanced sentences are proper. *See* Tex. Penal Code Ann. §§ 12.41(1), 12.42(d). We overrule both of Lindsey's issues and affirm the trial court's judgments.

AFFIRMED.

____

STEVE McKEITHEN
Chief Justice

Submitted on August 9, 2017
Opinion Delivered September 20, 2017
Do Not Publish

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