COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00009-CR
NO. 02-16-00010-CR

EX PARTE
RONALD ANTHONY PEAVY

FROM CRIMINAL DISTRICT COURT NO. 2 OF TARRANT COUNTY
TRIAL COURT NOS. C-2-010540-0363129-AP, C-2-010539-0363117-AP

MEMORANDUM OPINION[1]

Appellant Ronald Anthony Peavy filed an application for a writ of habeas corpus attacking his two orders of deferred adjudication community supervision. The trial court denied his application, and he appeals the denial as to both orders. *See* Tex. Code Crim. Proc. art. 11.072 (West 2015). We affirm.

[1]*See* Tex. R. App. P. 47.4.

Procedural History in the Trial Court

In trial court cause number 0363129D (02-16-00009-CR), on December 18, 1989, Appellant was placed on ten years' deferred adjudication community supervision for the offense of attempted murder. That same day, in trial court cause number 0363117D (02-16-00010-CR), Appellant was placed on ten years' deferred adjudication community supervision for the offense of aggravated sexual assault of a child younger than fourteen years of age. He successfully completed his community supervision for both cases in 1998.

On August 7, 2015, nearly twenty-six years after being initially placed on deferred adjudication community supervision, Appellant filed his application for writ of habeas corpus attacking both orders of deferred adjudication. Appellant was represented by retained counsel whose office was in Florida. Appellant alleged actual innocence and ineffective assistance of trial counsel. In his affidavit supporting his application, Appellant complained about the continuing duty to register as a sex offender. The complainant in the sexual offense also filed a supporting affidavit in which she too complained about Appellant's continuing duty to register as a sex offender and how it adversely affected his life.

Regarding Appellant's claim of actual innocence, he asserted that both of the complainants had recanted. This allegation was supported by an affidavit from the complainant of the sexual offense. His application, however, was not supported by an affidavit from the attempted murder complainant.

Regarding Appellant's claim of ineffective assistance of counsel, Appellant was represented by his brother in 1989. Appellant asserted that his brother failed to interview the alleged victims and failed to investigate potential defenses.

The State filed a response to Appellant's application for writ of habeas corpus. Regarding Appellant's claim of actual innocence of the offense of attempted murder, the State argued Appellant failed to support his application with an affidavit from the complainant. Regarding his claim of actual innocence of the offense of aggravated sexual assault of a child under fourteen, the State argued the offense was supported by evidence independent of that complainant's outcry—namely, the medical records showing severe trauma to her vaginal area consistent with her outcry.

Regarding Appellant's claim that his brother rendered ineffective assistance of counsel, the State supported its response with Appellant's brother's affidavit. In his affidavit, Appellant's brother went through how he investigated the case. He added that Appellant unequivocally admitted committing both offenses because he had been on steroids. Appellant's brother speculated that, given the seriousness of the offenses, Appellant got the light punishments he received because his actions could be attributed to steroid use. Appellant's brother asserted that in the twenty-six years since 1989, neither complainant had ever told him that Appellant was innocent. To the extent Appellant complained about his brother's failure to warn him about the sex offender registration

requirements, Appellant's brother stated that the sex offender registration law did not go into effect until 1991.

On December 8, 2015, the trial court denied Appellant's application for writ of habeas corpus. It adopted the State's proposed findings of fact and conclusions of law.

Why the Cases are Proceeding Without Briefs on Appeal

On January 6, 2016, Appellant's retained counsel filed a notice of appeal on Appellant's behalf for both causes. On January 29, 2016, we informed counsel that Appellant's brief was due February 18, 2016. On February 25, 2016, we informed counsel that Appellant's brief was late and instructed him to file a motion explaining the delay by March 7, 2016. On March 31, 2016, we sent counsel a second notice that Appellant's brief was late and again instructed him to file a motion explaining the delay by April 11, 2016. On April 8, 2016, Appellant filed a pro se letter requesting a sixty-day extension so he could retain counsel.

On April 19, 2016, we abated the appeal and remanded the case for a hearing in the trial court to determine the nature of the problem. Among the issues we wanted resolved was whether Appellant was indigent and whether he should be appointed counsel. *See* Tex. Code Crim. Proc. Ann. art. 1.051(d) (West Supp. 2016). In the event Appellant chose to proceed pro se, we instructed the trial court to admonish him of the dangers and disadvantages of

self-representation. *See Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975).

On May 6, 2016, the trial court conducted the abatement hearing. Although both Appellant and Appellant's counsel had been notified of the abatement hearing, neither appeared.

On May 17, 2016, Appellant's attorney filed a motion to withdraw in which he explained that he had perfected Appellant's appeals only to preserve Appellant's rights and with the expectation that Appellant would retain appellate counsel. Appellant's attorney asserted that he spoke with Appellant, that Appellant indicated he was unable to retain counsel due to his indigence, that Appellant intended to proceed pro se, and that Appellant consented to his withdrawal.

On May 19, 2016, we granted Appellant's attorney's motion to withdraw. Because Appellant did not appear at the abatement hearing to claim indigence, we instructed our clerk not to list him as indigent and to list him as pro se. In the order, we instructed Appellant to inform us immediately if he retained counsel. We informed Appellant that his briefs in both appeals were due June 20, 2016, and that if he failed to file either briefs or motions to extend time by that date, we might submit his two cases without briefs. Tex. R. App. P. 38.8(b)(4).

Appellant failed to file briefs, motions, or any other correspondence with us by June 20, 2016, and has not otherwise communicated with us after June 20,

2016. On July 14, 2016, we ordered his appeals submitted without briefs on August 4, 2014.

Discussion

When an appellant fails to file a brief, our review of the record is limited to specified categories of fundamental errors: (1) errors recognized by the legislature as fundamental; (2) the violation of rights, which are waivable only; and (3) the denial of absolute, systemic requirements. *See Ex parte Guzman*, No. 14-12-00033-CR, 2012 WL 2804992, at *1 (Tex. App.—Houston [14th Dist.] July 10, 2012, no pet.) (mem. op., not designated for publication). The Texas Court of Criminal Appeals has identified the following fundamental errors: (1) the denial of the right to counsel; (2) the denial of the right to a jury trial; (3) the denial of ten days' preparation before trial for appointed counsel; (4) the absence of jurisdiction over the defendant; (5) the absence of subject matter jurisdiction; (6) prosecution under a penal statute that does not comply with the Separation of Powers Section of the Texas Constitution; (7) jury charge errors resulting in egregious harm; (8) holding trial at a location other than the county seat; (9) prosecution under an ex post facto law; and (10) comments by a trial judge that taint the presumption of innocence. *Id.* (citing *Saldano v. State*, 70 S.W.3d 873, 888–89 (Tex. Crim. App. 2002), *modified sub silencio by Karenev v. State*, 281 S.W.3d 428, 434 (Tex. Crim. App. 2009) ("a defendant may not raise for the first time on appeal a facial challenge to the constitutionality of a statute").).

Our examination of the record does not show any fundamental error. Accordingly, we affirm the trial court's orders denying Appellant's application for writ of habeas corpus in the two causes.

/s/ Anne Gardner
ANNE GARDNER
JUSTICE

PANEL: GARDNER, WALKER, and MEIER, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: August 11, 2016