



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

**NO. 02-17-00163-CR
NO. 02-17-00164-CR**

EMILIO SAUCEDA RAMOS

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 372ND DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NOS. 1469250D, 1469252D

MEMORANDUM OPINION¹

Appellant Emilio Saucedo Ramos appeals from his convictions for aggravated robbery with a deadly weapon and for evading arrest or detention with a vehicle. See Tex. Penal Code Ann. § 29.03 (West 2011), § 38.04 (West 2016). In two issues, Ramos argues that the trial court abused its discretion and violated his due-process rights by sentencing him to fifteen years' confinement

¹See Tex. R. App. P. 47.4.

for aggravated robbery even though the State had offered to recommend a twelve-year sentence in exchange for his guilty plea. Because there was no error arising from Ramos's aggravated-robbery sentence and because Ramos does not challenge his conviction or sentence for evading arrest, we affirm the trial court's judgments. See Tex. R. App. P. 43.2(a).

I. BACKGROUND

On November 2, 2016, a grand jury indicted Ramos with evading arrest and aggravated robbery, both alleged to have occurred on July 22, 2016. Ramos was the getaway-car driver for the aggravated robbery, leading to the evading-arrest charge, and was charged as a party to the aggravated robbery with his gun-wielding codefendant.

On Thursday, April 27, 2017, Ramos's codefendant pleaded guilty to aggravated robbery without the benefit of a plea-bargain agreement. That same day, the State offered to recommend a sentence of twelve years in exchange for Ramos's guilty plea to aggravated robbery, conditioned on Ramos's acceptance of the offer no later than Friday afternoon, April 28. On April 28, the State produced to Ramos "videos and statements and information" it had obtained from Ramos's codefendant the day before. See Tex. Code Crim. Proc. Ann. art. 39.14(h) (West 2018). The State and Ramos appeared before the trial court that same day, and the State again told Ramos that the plea offer would expire that day notwithstanding the discovery it had just produced. Because the trial judge was unavailable later in the afternoon of April 28, he told Ramos and his

attorney, “If a deal is reached, I will accept the deal any time prior to about 11:00 o’clock on Monday [May 1] when it’s too late to cancel the jury, but once a jury has been summoned, we’re having a trial because we’ve had many, many, many months to resolve this case.”

Ramos admittedly did not accept the State’s offer by April 28 but appeared on Monday, May 1 and requested that the trial court “follow the plea agreement which [Ramos] did not accept on [April 28] due to the discovery issues.”² The trial court stated that it would not do so because there was no agreement to be followed and that it would consider the entire sentencing range. Ramos then asked the trial court questions regarding the law of parties, which the trial court explained. The trial court then clarified that Ramos could “go ahead and proceed and have his trial, to try to negotiate a different plea agreement, or to enter an open plea and [the trial court] would assess his sentence, or to have a trial and elect for the Court to set a sentence, after a jury heard the guilt/innocence phase of the case.” Ramos stated that he still wanted to plead guilty to aggravated robbery and opted to have the trial court determine his sentence after hearing the punishment evidence. Ramos then pleaded guilty to aggravated robbery with no plea-bargain agreement, signed written guilty-plea admonishments that further

²There is no reporter’s record from the May 1 guilty-plea hearing because Ramos had waived having a court reporter present. See Tex. R. App. P. 13.1. The trial court and the parties recounted the events of April 27, April 28, and May 1 at the May 3 sentencing hearing. Ramos does not dispute these facts.

explained the effect of pleading guilty with no plea agreement,³ signed a judicial confession, and waived his right to appeal all guilt-innocence issues. Ramos also pleaded guilty to evading arrest with no plea agreement, signed a judicial confession, and waived his right to appeal all guilt-innocence issues.

On Wednesday, May 3, the trial court held a sentencing hearing and recounted the facts leading to Ramos's May 1 guilty plea to aggravated robbery and stated that it understood why Ramos could have believed he had until May 1, not April 28, to accept the State's offer:

And I understand, as a human being, the possibility that Mr. Ramos might have thought he had until Monday to make a decision as opposed to you're thinking you can call me and tell me you want the deal, I will not prepare for this trial on Monday because [Ramos's counsel's] word is his bond and if he says it's a plea, then that means he's assured that his client wants to accept the offer. But I can see where Mr. Ramos was in the position of maybe thinking I had authority to extend a plea bargain versus simply say, I will honor the deal if y'all . . . reach an agreement as long as the jury is not sitting in the hall and I can cancel them without hardship.

And so y'all had other discussions outside my presence. But I do know and want the record to reflect, Mr. Ramos, says [on May 1], Why can't I have the 12 today, and I said, Because the 12, according to the State, expired Friday [April 28], I cannot make them offer you 12, I cannot make you plead guilty or not guilty, I cannot do those things. The umpire does not have the authority unless the umpire is given the authority to set a sentence. But if I do that, I have to follow the rules and be willing to give you as little as five or

³Specifically, these admonishments provided that the plea proceeding would act as his trial and that if found guilty, "punishment can be set anywhere within the range of punishment prescribed by law for the offense." Ramos was further warned that once the trial court accepted his guilty plea, he could not withdraw it absent trial-court permission.

as many as 99 or anything in between based upon what the facts are and what good or bad or neutral that I hear.

The trial court then stated that it would hear the evidence regarding sentencing and could “re-address these other issues at an appropriate time, if necessary.”

The State and Ramos then proffered punishment witnesses. During the State’s closing argument on punishment, the prosecutor addressed the State’s prior plea offer. The trial judge again clarified that Ramos and his counsel were clearly told that the State’s offer expired on April 28:

And you both agreed that you walked up [on April 28] and even . . . after you hooked up some discovery and did something, [the State] pointed out, The 12, it’s offered today only, and I understand y’all both candidly admitted that was said in the presence of [Ramos]. . . . But the record is unequivocal, [Ramos] was told that, you were told that, and if you drew some innuendo from me saying, I will do the deal as long as it’s done on Monday while the jury can be excused, that that somehow extends the time limit, then, as a layperson, I understand where a defendant might perceive that.

. . . .

. . . And I meant to reassure that, okay, well, if something is worked out, I will accept a deal as long as I can cancel the jury. But y’all’s private conversations of when the deal has to be accepted or rejected were independent of my direct involvement

The trial court accepted Ramos’s guilty pleas and assessed his punishment at fifteen years’ confinement for the aggravated robbery and at ten years’ confinement for evading arrest, with the sentences to run concurrently. The trial court asked Ramos if he had any questions about his sentences. Ramos asked if the judge could “go lower than 15,” and the judge responded, “Yes, of course I can, but I’m not. I’ve made my decision based on what I heard.”

Ramos filed a notice of appeal from both his aggravated-robbery and his evading-arrest convictions. He also filed a request for reconsideration of his sentences and alternative motion for new trial, arguing that the trial court's statement that it would accept his plea on May 1 extended Ramos's acceptance deadline from April 28 to May 1. The alternative new-trial motion was deemed denied. See Tex. R. App. P. 21.8(c). Ramos asserts on appeal that the trial court extended the acceptance deadline, entitling him to a twelve-year sentence for the aggravated robbery, and that the State's offer, even if the acceptance deadline was not extended, should be enforced based on the constitutional protections of due process.

II. DISCUSSION

A. EVADING ARREST

Ramos does not attack his conviction for evading arrest or detention with a vehicle. Accordingly, we affirm the trial court's evading-arrest judgment. See, e.g., *Ingram v. State*, 503 S.W.3d 745, 747 (Tex. App.—Fort Worth 2016, pet. ref'd). We now turn to the gravamen of Ramos's appellate complaints—the effect of the State's plea-bargain offer on his sentence for aggravated robbery.

B. AGGRAVATED ROBBERY

1. Appellate Claims Fairly Included

Initially, the State asserts that Ramos only raises one issue on appeal: “Appellant argues that he was deprived of his right to accept a plea bargain in contravention of the due process clause.” But Ramos fairly included in his

briefing two separate challenges to his fifteen-year sentence for aggravated robbery:

1. The trial court's statement on Friday, April 28 that it would accept Ramos's plea to aggravated robbery on Monday, May 1 operated to extend his deadline to accept the State's offer and created an enforceable plea-bargain agreement when Ramos pleaded guilty on May 1.
2. Even if an enforceable agreement was not reached, the trial court's failure to enforce the State's prior offer of twelve years in exchange for Ramos's guilty plea based on Ramos's misunderstanding violated his due-process rights.

The first issue asserts that there was an enforceable plea-bargain agreement based on the trial court's extension; the second issue assumes there was no enforceable plea-bargain agreement but asserts that due process demands Ramos be afforded the benefits of the State's offer. Even though Ramos briefs both issues together, his briefing fairly includes both enforceability and due-process arguments. See Tex. R. App. P. 38.1(f), 38.9. As such, we must address both. See Tex. R. App. P. 47.1.

2. Error Preservation

The State next argues that because Ramos did not raise a due-process argument in the trial court, he has failed to preserve the question for our review. To preserve error, the record must show that Ramos made his due-process complaint through a timely request, objection, or motion that stated the grounds for the ruling sought with sufficient specificity to make the trial court aware of the complaint. See Tex. R. App. P. 33.1(a); *Clark v. State*, 365 S.W.3d 333, 340 (Tex. Crim. App. 2012). We may not engage in a "hyper-technical" parsing of the

record to determine preservation but are merely to determine if Ramos “let the trial judge know what he wants, why he thinks he is entitled to it, and to do so clearly enough for the judge to understand him at a time when the trial court is in a proper position to do something about it.” *Everitt v. State*, 407 S.W.3d 259, 263 (Tex. Crim. App. 2013) (quoting *Lankston v. State*, 827 S.W.2d 907, 909 (Tex. Crim. App. 1992)). In short, “magic language” is not required; the record need only reflect that “the trial court understood the basis of a defendant’s request.” *State v. Rosseau*, 396 S.W.3d 550, 555 (Tex. Crim. App. 2013).

At the May 3 sentencing hearing, Ramos’s counsel argued that the discovery proffer on April 28 prevented him from determining whether he should plead guilty by the State’s deadline, which was that same day. The trial court understood Ramos to be raising a fair-trial argument:

But I do understand your concern of hoping you didn’t get screwed out of a 12-year thing, through nobody’s fault, but all the constitution guarantees anyone is a right to a fair trial. And you can’t be ready for a fair trial when you don’t review the evidence in advance. So I understand the spot you’re in.

A fair reading of the record reveals that the trial court understood that Ramos’s complaints about the quick acceptance deadline equated to an allegation that his constitutional rights had been violated. See *Clarke v. State*, 270 S.W.3d 573, 580, 583 (Tex. Crim. App. 2008); *Lankston*, 827 S.W.2d at 910–11. Under the particular facts of this case, we conclude that Ramos preserved for our review the constitutional argument he raised in his second issue.

Similarly, Ramos sufficiently made the trial court aware of his complaint raised in his first issue on appeal that the trial court extended the State's acceptance deadline such that the State was bound by its twelve-year sentencing offer when Ramos pleaded guilty on May 1. See Tex. R. App. P. 33.1(a)(1). When Ramos appeared on May 1, he argued that the State's offer was an enforceable plea-bargain agreement based on the trial court's statement it would accept any plea on May 1, which he contended he reasonably relied on as an extension of the State's acceptance deadline. Ramos then requested that the trial court "follow" the State's recommendation of twelve years, which the trial court denied. The trial court stated that it understood Ramos's argument to be that he "had until Monday [May 1] to decide, as opposed to Monday to plea[d]" and that he did not want to "get screwed out of a 12-year thing, through nobody's fault." And after the trial court stated that it was assessing Ramos's punishment at fifteen years' confinement, Ramos asked the trial court to consider a sentence "lower than 15." The record reflects that Ramos sufficiently alerted the trial court to his argument at a time when the trial court could address the issue.

Additionally, Ramos filed a motion for new trial requesting enforcement of the State's twelve-year offer. Ramos further asserted that the quick deadline on the heels of the State's discovery proffer prevented him from making a voluntary, knowing, and informed plea decision. The motion for new trial also served to raise these issues at a time when the trial court could remedy a violation of the

plea agreement, if any.⁴ See *Bitterman v. State*, 180 S.W.3d 139, 142–44 (Tex. Crim. App. 2005). To hold, as the State urges, that Ramos did not preserve his appellate arguments would impermissibly elevate technicalities over “the shared understanding of the parties at the time.” *Clark*, 365 S.W.3d at 339.

3. Plea-Bargain Agreement

But even though preserved, Ramos’s arguments are unavailing. A plea-bargain agreement is between the State and the defendant, not the trial court. See *Moore v. State*, 295 S.W.3d 329, 332 (Tex. Crim. App. 2009). Here, the State offered to recommend a twelve-year sentence to the trial court in exchange for Ramos’s guilty plea to aggravated robbery, conditioned on his acceptance no later than April 28. Ramos concedes that he did not accept the State’s offer by this deadline. The trial court did not have the authority to add unnegotiated terms to the agreement such as extending the acceptance deadline. See *id.* In fact, this was one of the bases upon which the trial court relied in denying Ramos’s

⁴Although the record does not reflect that Ramos timely presented his new-trial motion to the trial court, we mention the grounds Ramos raised in the motion merely to show that Ramos’s contentions regarding the plea-bargain offer were consistent with his arguments at the guilty-plea hearing and the sentencing hearing. See *generally* Tex. R. App. P. 21.6 (requiring presentment of new-trial motion within ten days of filing); *Richardson v. State*, 328 S.W.3d 61, 72 (Tex. App.—Fort Worth 2010, pet. ref’d) (holding defendant did not preserve constitutional challenge to sentence because new-trial motion raising the issue was not presented to the trial court). We do not hold that the motion by itself preserved Ramos’s appellate arguments; he preserved his arguments by sufficiently raising them at the guilty-plea hearing and the sentencing hearing.

request that the trial court follow the State's twelve-year offer. We overrule Ramos's first issue.

And the failure to order specific performance of the State's offer, even though not enforceable, did not violate Ramos's due-process rights. At no point during the guilty-plea proceeding or the sentencing hearing did Ramos attempt to do anything other than plead guilty, even when the trial court informed him in clear terms that it would not be bound by the State's expired plea offer. The record is clear that both Ramos and his counsel knew of the State's offer and knew the State's set deadline to accept it. They also knew before Ramos entered his plea that the trial court would consider the entire punishment range. In his new-trial motion, Ramos continued to assert that he did not want to withdraw his plea and did not want a new plea proceeding. He only asked that the trial court "honor" the State's plea offer based on his reliance on the trial court's statement that Ramos had until May 1 to plead.⁵ The trial court's refusal to do so did not violate Ramos's due-process rights. See *Purser v. State*, 902 S.W.2d 641, 648–49 (Tex. App.—El Paso 1995, pet. ref'd); cf. *Thompson v. State*, 691 S.W.2d 627, 635–36 (Tex. Crim. App. 1984) (recognizing trial court cannot enforce plea bargain if no agreement reached between prosecutor and defendant); *Vineyard v. State*, No. 07-01-0093-CR, 2001 WL 1480665, at *2 (Tex. App.—Amarillo Nov. 20, 2001, pet. ref'd, untimely filed) (not designated for

⁵On appeal, Ramos continues to request only enforcement of the State's twelve-year offer.

publication) (discussing unenforceability of expired plea offer in the context of ineffective-assistance-of-counsel claim). We overrule Ramos’s second issue.

III. CONCLUSION

Because Ramos fails to raise any issue directed to his conviction and sentence for evading arrest, we affirm that judgment. And although Ramos preserved his appellate issues seeking enforcement of the State’s plea offer either under the terms of the trial court’s extension or in the interest of due process, the trial court did not have the power to add terms to the State’s offer, and due process does not demand enforcement of an expired plea offer. See *Salinas v. State*, 810 S.W.2d 855, 858 (Tex. App.—Corpus Christi 1991, pet. ref’d) (“The State and appellant never reached a plea agreement, and the trial court did not err in refusing to order specific performance.”). Accordingly, the trial court did not abuse its discretion by considering the entire punishment range in assessing Ramos’s sentence. We affirm the trial court’s aggravated-robbery judgment as well.

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

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

DELIVERED: August 30, 2018