COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-17-00321-CR
NO. 02-17-00322-CR

THERON SCOTT MCDANIEL APPELLANT

V.

THE STATE OF TEXAS STATE

FROM THE 43RD DISTRICT COURT OF PARKER COUNTY
TRIAL COURT NOS. CR16-0566, CR16-0567

MEMORANDUM OPINION[1]

I. Introduction

Appellant Theron Scott McDaniel was indicted in two cases for committing the sexual assault of a child, a second-degree felony,[2] and indecency with a

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

[2] The punishment range for a second-degree felony is two to twenty years' confinement and up to a $10,000 fine. *See* Tex. Penal Code Ann. § 12.33 (West 2011).

child.[3] *See* Tex. Penal Code Ann. §§ 21.11, 22.011(a), (f) (West Supp. 2017). He pleaded guilty in exchange for the State's waiver of the indecency counts;[4] there was no agreement as to his sentence. *See Shankle v. State*, 119 S.W.3d 808, 813 (Tex. Crim. App. 2003) (describing charge-bargaining as one of the two basic kinds of plea bargaining, involving "questions of whether a defendant will plead guilty to the offense that has been alleged or to a lesser or related offense, and of whether the prosecutor will dismiss, or refrain from bringing, other charges"). Although McDaniel asked for deferred adjudication community supervision, the trial court assessed McDaniel's punishment at thirteen years' confinement for each offense, to run consecutively, after accepting his guilty plea. *See* Tex. Penal Code Ann. § 3.03 (West Supp. 2017).

In a single issue, McDaniel complains that his guilty pleas were not knowingly entered, arguing that the facts "before this Court demonstrate a lack of both a clear explanation as well as a clear understanding of the consequences of

---

[3]In cause number 02-17-00321-CR, McDaniel was accused of having committed these offenses on or about July 1, 2014; in cause number 02-17-00322-CR, McDaniel was accused of having committed these offenses on or about September 1, 2014.

[4]Because the trial court's certifications of McDaniel's right of appeal did not accurately reflect the charge bargain, we abated these cases so that the trial court could enter amended certifications that comport with the record in each case. *See* Tex. R. App. P. 25.2(d), 34.5(c)(2). The certifications now reflect that although these were plea-bargain cases, McDaniel was given permission to appeal.

such a plea and therefore, render the plea involuntarily and unknowingly made." Because the record does not support McDaniel's contentions, we affirm.

II. Background

A. Written Plea Admonishments

McDaniel signed the written plea admonishments under the following paragraph:

> I sign this document after consulting with my attorney. I have read each and every paragraph above . . . and I fully understand each and every paragraph and admonishment herein. I am aware of the consequences of my plea. Furthermore, I have no questions about these admonishments, as given by the Court.

He also signed under the assertion that he was "aware of the consequences of [his] plea, believe[d] that [he was] mentally competent to enter such plea, and [his] plea [was] made freely, knowingly[,] and voluntarily."

The trial judge signed the document under a paragraph stating that he had placed McDaniel under oath and sworn him to the veracity of the written plea admonishments, McDaniel's waivers, and his judicial confession and that he had approved those waivers and confession after having

> interrogated Defendant in person in open Court along with his lawyer and the Court being satisfied as to Defendant's sanity and that Defendant had his constitutional, statutory, and legal rights explained to him and that Defendant has the age, education, intelligence, and discretion to understand and does understand his rights with regard to trial by jury, the appearance, confrontation, and cross-examination of witnesses, the privilege against self-incrimination, and all other rights described herein, and that Defendant further understands the waivers and the judicial confession and the contents thereof to which he has agreed and to which he has been sworn . . . . In addition, the Court finds as a fact

> that the Defendant is fully competent and that his plea is intentionally, knowingly, and voluntarily entered.

See generally Tex. Code Crim. Proc. Ann. art. 26.13 (West Supp. 2017). McDaniel also received supplemental admonishments regarding his sex offender registration requirements, which he signed in acknowledgment.

McDaniel's counsel signed all of the admonishments, certifying that he had fully reviewed and explained to McDaniel the admonishments, rights, waivers, and judicial confession, including the sex offender registration requirements and "all of the procedural rights afforded him by the State of Texas and the United States" and that he was satisfied that McDaniel was legally competent to enter his plea, had freely, knowingly, and voluntarily waived his rights, and would plead guilty freely, knowingly, and voluntarily, "understanding the consequences thereof."

B. Plea Hearing and Punishment Trial

The trial court asked McDaniel whether his attorney had explained the plea papers "to [his] satisfaction," and McDaniel replied, "Yes, sir." The trial court then asked him whether he understood that "by signing these papers and going forward today, [he was] basically admitting to engaging in the conduct as alleged by the State," and McDaniel said that he understood. The trial court then asked him whether he wanted to go forward and wanted to do so "freely and voluntarily," and McDaniel said, "Yes, sir." The trial court then stated, "It's the court's understanding that you are going to enter a plea of guilt to the charges

against you, and there is no agreement as to punishment, and that will be presented to the court. Is that your understanding as well?" McDaniel said, "Yes, sir."

The trial court then asked McDaniel if he understood the charges against him and that they each carried a punishment range of two to twenty years in prison and up to a $10,000 fine, and McDaniel said that he did. The trial court also asked McDaniel if he had any questions about the supplemental admonishments regarding the sex offender registration requirements, and McDaniel affirmed that he understood what the document said and that he had no specific questions.

The State put on one witness, who had known the complainant's family for eight to ten years and had been housing the complainant for the fifteen months before trial, asked the trial court to take judicial notice of the presentence investigation report (PSI), and then rested. In addition to his own testimony, McDaniel put on seven witnesses who testified in favor of community supervision instead of incarceration: his employer, who had posted McDaniel's bond and paid his attorney's fees, three work colleagues, two church counselors, and his wife. McDaniel stated that he had decided to testify "so that [he] can be the one to say that [he] take[s] responsibility for what happened"[5] and requested deferred

[5]McDaniel admitted to having sexual intercourse with the then-fifteen-year-old complainant thirteen times, for a little over a year, and testified that he understood that he could be charged with all thirteen of those occasions although the State had only charged him with two. The prosecutor asked him whether he

adjudication community supervision so that he could “continue to be a productive part of society and to be able to support [his] family.”

During his testimony, McDaniel stated,

> Your Honor, I’m asking you to consider mercy of this court on somebody who did something horrible, who’s taking full responsibility for it. And I am not wanting to get out of punishment, but I ask the court to allow me probation so that I’m able to continue to function and support my family. If that doesn’t happen, I’m concerned that my family will be homeless.
>
> . . . .
>
> . . . I know I probably deserve the penitentiary. But I still plead for probation, to be able to work through this and find out what’s going on with me and to be able to support my family and be good people for the people who count on me.

During cross-examination, McDaniel agreed that for breaking the law, he deserved prison time and that there was no justification for what he had done to the complainant, who, at the time of the sentencing, was on antidepressants and had been cutting herself. On redirect, McDaniel said that he knew incarceration was one of the trial court’s options and that he would “accept whatever the punishment is.”

During closing arguments, McDaniel’s counsel argued that to send him to prison would punish not only McDaniel but also his family and his employer, that deferred adjudication community supervision would be a better choice because

---

knew “before, during, and after every single time . . . that it was wrong under the law, that it was wrong under morality, it was wrong for [his] marriage, it was just wrong in every possible way.” McDaniel replied, “Yes, sir.”

he had no other criminal history and had complied with all of the terms and conditions of his probation while out on bond, and that his PSI showed only a very slim chance of recidivism. The prosecutor pointed out that McDaniel had had "time after time after time to make different decisions. And he admitted he felt guilty, and he did it anyway. Every single time. And there was planning that went into it." The prosecutor asked for jail time and stated that he did not think a twenty-year sentence would be inappropriate.

The recitals in the trial court's judgments comport with the written admonishments signed by McDaniel and reflect, "It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of this plea."

III. Discussion

We are not unsympathetic to McDaniel's plea for leniency to the trial court. Indeed, it is axiomatic that society benefits from productive citizens who maintain employment and provide for themselves and their families. Incarceration is the antithesis of productivity and good citizenship; it is destructive to family ties. Loved ones who remain on the outside when a family member is incarcerated become invisible victims of the crime itself when they are left to suffer hardships that were not of their own making. Nevertheless, it is not our place to effectuate social justice, whatever that may mean in a particular circumstance, or to second-guess a trial court's decision that is made within the zone of discretion. Our role is limited to deciding issues of law that are properly presented to us.

The sole issue before us, as framed by McDaniel, is whether the portion of his written plea admonishments stating that "where there is no plea bargain agreement, any appeal of my conviction upon a plea of guilty or nolo contendere is limited to jurisdictional issues only," was inadequate. McDaniel argues that it was inadequate because there was no way he could understand the significance of "jurisdictional issues." Thus, he contends, the admonition "in fact amount[ed] to no meaningful admonition." McDaniel complains that warnings should be in plain language with easy-to-understand explanations. But McDaniel fails to explain what errors, if any, he was prevented from appealing based on this language.

Due process requires that a guilty plea be entered knowingly, intelligently, and voluntarily. *Boykin v. Alabama*, 395 U.S. 238, 242–44, 89 S. Ct. 1709, 1712–13 (1969); *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App.), *cert. denied*, 549 U.S. 1052 (2006). When the record reflects that a defendant was properly admonished, a prima facie showing exists that the guilty plea was entered knowingly and voluntarily. *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998). The burden then shifts to the defendant to establish that, notwithstanding the statutory admonishments, he did not fully understand the consequences of his plea such that he suffered harm. *Id.*

The record reflects that McDaniel and his counsel signed written admonishments complying with code of criminal procedure article 26.13 and that McDaniel orally reaffirmed his understanding of the admonishments when the

trial court went over them at the plea hearing. *See* Tex. Code Crim. Proc. Ann. art. 26.13. The record reflects that McDaniel was properly admonished, which constitutes a prima facie showing that his guilty pleas were knowingly and voluntarily made. *See Martinez*, 981 S.W.2d at 197.

And McDaniel has failed to meet the burden that shifted to him upon this showing because the single admonition to which McDaniel directs us is not required by code of criminal procedure article 26.13,[6] *see id.*, and there are no statutory or other legal requirements that a defendant pleading guilty without the benefit of a plea bargain be advised of his limited right of appeal. *Fennell v. State*, 958 S.W.2d 289, 292 (Tex. App.—Fort Worth 1997, no pet.). In other words, the inclusion of this admonition did not render McDaniel's guilty pleas

---

[6]Under article 26.13, the written or oral admonitions that a trial court is required to give prior to accepting a plea of guilty or nolo contendere are: (1) the offense's punishment range; (2) the fact that the prosecutor's recommendation as to punishment is not binding on the court; (3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, the trial court must give its permission to the defendant before he may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial; (4) the fact that if the defendant is not a U.S. citizen, a plea of guilty or nolo contendere may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law; (5) the fact that the defendant will be required to meet sex offender registration requirements if he is convicted of or placed on deferred adjudication for an offense for which a person is subject to sex offender registration; and (6) the fact that if the defendant is placed on community supervision, after satisfactorily fulfilling the community supervision conditions and on expiration of the period of community supervision, the court is authorized to release the defendant from the penalties and disabilities resulting from the offense as provided by article 42A.701(f). Tex. Code Crim. Proc. Ann. art. 26.13(a)(1)–(6), (d).

involuntary because an understanding of the meaning or significance of the term "jurisdictional issues" was not required for his pleas to have been knowingly and voluntarily made. *See id.*; *see also Senn v. State*, Nos. 02-15-00027-CR, 02-15-00028-CR, 02-15-00029-CR, 2015 WL 5778759, at *1–2 (Tex. App.—Fort Worth Oct. 1, 2015, pet. ref'd) (mem. op., not designated for publication) (holding that the "limited to jurisdictional issues" admonition did not render appellant's guilty plea involuntary).

Moreover, this record affirmatively demonstrates that McDaniel was aware of the consequences of his decision to plead guilty. It reflects that McDaniel knew how bad his actions were—he admitted that he deserved incarceration—and that he pleaded guilty to the offenses for the *chance* at deferred adjudication community supervision, which would not have been available to him if he had sought a jury trial. *See* Tex. Code Crim. Proc. Ann. art. 42A.102(a) (West 2018) (stating that a judge may place on deferred adjudication community supervision a defendant charged with an offense under penal code section 22.011, regardless of the victim's age, only if the judge makes a finding in open court that placing the defendant on deferred adjudication community supervision is in the victim's best interest).

Accordingly, because McDaniel has failed to meet his burden to establish that, notwithstanding the statutory admonishments, he did not understand the consequences of his guilty pleas, we hold that his guilty pleas were made knowingly and voluntarily, and we overrule his sole issue.

IV. Conclusion

Having overruled McDaniel's sole issue, we affirm the trial court's judgments.

/s/ Bonnie Sudderth

BONNIE SUDDERTH
CHIEF JUSTICE

PANEL: SUDDERTH, C.J.; MEIER and KERR, JJ.

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

DELIVERED: August 31, 2018