In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00132-CR

WILLIAM BRILEY, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 137th District Court
Lubbock County, Texas
Trial Court No. 2015-404,959, Honorable John J. "Trey" McClendon III, Presiding

April 7, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Appellant William Briley appeals a conviction following his plea of guilty. On appeal, he contends the trial court reversibly erred when it failed to admonish him as to his duty to register as a sex offender. We will affirm.

Background

Appellant was charged by a seven-count indictment alleging acts of sexual contact with three different minors. Without a plea bargain agreement, appellant waived

a trial by jury, stipulated to his guilt, and entered a plea of guilty to count 1 of the indictment, which alleged the offense of continuous sexual abuse of a child younger than fourteen.[1]

The waiver of rights, stipulation agreement and judicial confession appellant signed before his plea did not address his obligation to register as a sex offender. TEX. CODE CRIM. PROC. ANN. art. 26.13(a)(5) (West 2014). Before accepting appellant's plea of guilty, the trial court insured he understood a number of consequences of his plea, including the range of punishment by imprisonment for 25 years to 99 years or life and the fact he would not be eligible for parole, but the court omitted the admonishment regarding the registration requirement.

After a presentencing report was prepared, the trial court held a two-day punishment hearing and sentenced appellant to life in prison.

Analysis

In his sole issue on appeal, appellant contends the trial court's failure to admonish him he would be required to register as a sex offender affected his substantial rights and requires reversal and a new trial. The State concedes the statute requires the admonishment must be administered "prior to accepting a plea of guilty . . ." and that the trial court did not do so here, but argues appellant's requested relief is unavailable to him. We agree with the State.

[1] TEX. PENAL CODE ANN. § 21.02 (West 2013). A person serving a sentence for conviction under section 21.02 is not eligible for parole. TEX. GOV'T CODE ANN. § 508.145(a) (West 2017).

Our Code of Criminal Procedure requires a trial court, prior to accepting a plea of guilty or nolo contendere, to admonish the defendant of the fact he will be required to meet the registration requirements of Chapter 62 of the Code if he is convicted of an offense subjecting him to registration under that chapter. TEX. CODE CRIM. PROC. ANN. art. 26.13(a)(5) (West 2014). The requirement to register as a sex offender is a direct consequence of a guilty plea. *See Mitschke v. State*, 129 S.W.3d 130, 136 (Tex. Crim. App. 2004). But, because the consequence is a non-punitive measure, failure to admonish does not necessarily render a plea involuntary. *Id.* at 136. And, in 2005, the Legislature amended subsection (h) to article 26.13 to provide that a trial court's failure to comply with the registration-admonishment requirement "is not a ground for the defendant to set aside the conviction, sentence, or plea." TEX. CODE CRIM. PROC. ANN. art. § 26.13(h).

We addressed a contention similar to that appellant makes here in *Allen v. State*. Nos. 07-14-00369-CR, 07-14-00370-CR, 2015 Tex. App. LEXIS 3308 (Tex. App.—Amarillo April 2, 2015, no pet.) (mem. op., not designated for publication). There we cited opinions of other courts of appeals holding that the 2005 amendment to article 26.13(h) precludes a defendant from setting aside his plea, conviction or sentence merely because the court failed properly to admonish him according to article 26.13(a)(5). *Id.* at *2; *see, e.g., Morin v. State,* 340 S.W.3d 816, 818 (Tex. App.—San Antonio 2011, pet. ref'd) (holding Legislature has "foreclosed any attempt by an appellant to set aside a plea, conviction, or sentence based on a trial court's failure to properly admonish in accordance with article 26.13(a)(5)"). The holding is applicable to appellant's attempt to set aside his plea and conviction in this case.

In *Allen,* we also pointed out factors suggesting the trial court's failure to admonish was harmless, under the standard set out in *Anderson v. State,* 182 S.W.3d 914 (Tex. Crim. App. 2006), applicable in cases arising before the effective date of the 2005 amendment. That standard asks whether the appellate court, considering the record as a whole, has fair assurance that the defendant's decision to plead guilty would not have changed had the court admonished him as the law requires. *Id.* at 919.

Review of this record convinces us that the court's failure to admonish appellant was harmless even under the *Anderson* standard. Appellant plead guilty to continuous sexual abuse of a child, knowing that he would spend a minimum of twenty-five years, and perhaps life, in prison without the possibility of parole. He remained indicted for six other counts also alleging sexual offenses against minors. He also had two prior misdemeanor convictions for assault and terroristic threat. Under those circumstances, the notion he would have chosen not to plead guilty had the court told him he would be required to register as a sex offender if he were released is, to put it mildly, far-fetched.

Moreover, during the punishment hearing, appellant's son testified to his own requirement to register as a sex offender for an offense similar to that of appellant. Appellant also testified to a number of instances of sexual conduct with minors during his lifetime and to his failure to ask for help because he "didn't want to be labeled as a sex offender." In addition, like in *Allen*, 2015 Tex. App. LEXIS 3308 at *2, the court's judgment contains the special finding that "[appellant] represents that his/her counsel has explained the requirements of Chapter 62 of the Texas Code of Criminal Procedure as it applies to [appellant]." The State contends the record permits a reasonable inference appellant had prior independent knowledge of the sex-offender-registration

requirement, and we agree. These factors distinguish this case from *Shankle v. State,* cited by appellant. 59 S.W.3d 756 (Tex. App.—Austin 2001), *vacated on other grounds,* 119 S.W.3d 808 (Tex. Crim. App. 2003).

For the reasons discussed, we overrule appellant's issue on appeal, and affirm the trial court's judgment.

James T. Campbell
Justice

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