



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-17-00172-CR

ADOLFO YBARRA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 137th District Court
Lubbock County, Texas
Trial Court No. 2017-411,674, Honorable John J. "Trey" McClendon III, Presiding

April 9, 2018

MEMORANDUM OPINION

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

Appellant Adolfo Ybarra appeals from his conviction of the offense of failure to register as a sex offender¹ and the resulting sentence of imprisonment for fifteen years.²

¹ TEX. PENAL CODE ANN. § 62.102 (West 2018).

² This is a second-degree felony punishable by imprisonment for any term of not more than 20 years or less than 2 years and a fine not to exceed \$10,000. TEX. PENAL CODE ANN. § 12.33 (West 2018).

Through one issue, appellant contends reformation of the judgment is required. The State agrees. We will reform the trial court's judgment and affirm it as reformed.

Background

Appellant was indicted for failure to register as a sex offender. In early 2017, appellant expressed to the trial court his desire to waive trial by jury and to proceed to trial before the bench. Shortly thereafter, the court set the matter for trial. Appellant was admonished of his right to trial by jury and, over the advice of counsel, chose to waive his right. Appellant's written waiver of a jury, signed by the parties, appears in the appellate record.

The reporter's record shows the case then was tried to the bench. The State called six witnesses and appellant called one witness. Following presentation of the evidence, the trial court found appellant guilty as charged in the indictment. After a pre-sentence investigation report was prepared, the trial court held a punishment hearing. Both sides presented witness testimony. The trial court found the allegations in the enhancement paragraph of the indictment to be "true" and assessed punishment as noted. This appeal followed.

Analysis

Through his sole appellate issue, appellant seeks reformation of the written judgment to reflect he was convicted and sentenced in a bench trial rather than a jury trial.

While the judgment properly states in places it was the trial court that found appellant guilty of the offense and assessed appellant's punishment, the judgment is entitled "Judgment of Conviction by Jury" and includes language specific to a jury trial. Rather than correctly stating that a jury was waived, for instance, the written judgment states a jury was selected, impaneled, and sworn. It also states the jury heard the evidence submitted and argument of counsel.

As all agree, the reporter's record and the documents in the clerk's record show appellant waived his right to trial by jury with the State's consent, the matter proceeded to trial before the bench, the court convicted appellant of the offense for which he was indicted, and the court assessed appellant's punishment.

This Court has the power to modify the judgment of the court below to make the record speak the truth when we have the necessary information to do so. *Hutton v. State*, 313 S.W.3d 902, 909 (Tex. App.—Amarillo 2010, pet. ref'd) (citing TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.—Dallas 1991, pet. ref'd)). And, appellate courts "have the power to reform whatever the trial court could have corrected by a judgment nunc pro tunc where the evidence necessary to correct the judgment appears in the record." *Asberry*, 813 S.W.2d at 529.

We sustain appellant's issue. See TEX. CODE CRIM. PROC. ANN. art. 42.01, § 1 (describing requirements of judgment). Because the record unambiguously shows appellant was convicted and sentenced by the trial court rather than by a jury, we reform the written judgment to delete the heading reading "Judgment of Conviction by Jury," and

instead make its heading read: “Judgment of Conviction by Court – Waiver of Jury Trial.” We reform the judgment also to delete all references to the selection and seating of a jury, and to the role of a jury in the trial of the case. We further reform the judgment by adding, immediately after the sentence reading, “Both parties announced ready for trial,” a sentence reading “Defendant waived the right of trial by jury and entered the plea indicated above.”

As so reformed, the judgment of the trial court is affirmed.

James T. Campbell
Justice

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