# TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

**NO. 03-15-00581-CR**

**Ex parte Saul De Paz**

**FROM THE DISTRICT COURT OF COMAL COUNTY, 207TH JUDICIAL DISTRICT**
**NO. C2015-1149X, HONORABLE JACK H. ROBISON, JUDGE PRESIDING**

## M E M O R A N D U M  O P I N I O N

In one issue, appellant Saul De Paz appeals the trial court's denial of his motion for habeas relief. Appellant contends that the trial court abused its discretion by not releasing him on a personal bond because the State was not ready for trial within 90 days after his arrest and detention on felony charges. *See* Tex. Code Crim. Proc. art. 17.151, § 1(1). Because we conclude that the trial court did not abuse its discretion, we affirm the trial court's denial of appellant's request for habeas relief.

## BACKGROUND

Appellant was arrested on April 19, 2015, for manufacture or delivery of a controlled substance in Penalty Group 1 of more than four grams but less than 200 grams, *see* Tex. Health & Safety Code § 481.112(d) (felony of first degree), and delivery of marihuana of more than one-fourth ounce but less than five pounds, *see id.* § 481.120(b)(3) (state jail felony). His bail was set in the amount of $80,000 for the two offenses, but he did not post bail and remained confined. On July 30, 2015, appellant filed a "writ of habeas motion to reduce bail due to delay." Because he had

been continuously confined for more than 90 days on the pending felony charges without the State being ready for trial, he moved for the bond to be reduced to an amount no greater than a personal bond pursuant to article 17.151 of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. art. 17.151, § 1(1).

The trial court held two hearings on appellant's motion for his bail to be reduced to an amount no greater than personal bond. At the first hearing, which occurred on August 6, 2015, appellant testified that he had been incarcerated since April 19, 2015, and that he was unemployed and did not have any assets. The State opposed reducing the bond to a personal bond and argued that article 17.151 did not apply because of a hold from Hays County that was based on a pending motion to adjudicate guilt on a class B misdemeanor[1] in that county and a hold by Immigration and Customs Enforcement (ICE). At the subsequent hearing on September 3, 2015, the trial court denied appellant's request for bail to be reduced to a personal bond, finding that appellant "has a hold on him on a misdemeanor case out of Hays County" and concluding that "under 17.151 if he has a hold on him, he is not entitled to a PR bond."

After that hearing, the trial court also entered supplemental findings of fact and conclusions of law. The trial court found that, in his motion and at the hearing, appellant "failed to show that he was entitled to the requested relief" and concluded:

[1] The record reflects that the offense at issue in Hays County is possession of marihuana in the amount of less than two ounces and that bail was set in the amount of $6,000. *See* Tex. Health & Safety Code § 481.121(b)(1); *see also* Tex. Penal Code § 12.22 (stating punishment range for individual adjudged guilty of Class B misdemeanor).

1. This Court further concludes that, because Defendant did not show the time period applicable to a motion to revoke in art. 42.12 had run, Defendant was not entitled to relief. See Tex. Code Crim. Proc. art. 42.12, § 21 (b–2).

2. This Court further concludes that Defendant's ICE hold would provide an additional basis for denial of his motion.

3. The ICE hold would preclude relief under the federal supremacy doctrine.

**ARTICLE 17.151 AND STANDARD OF REVIEW**

Section 1(1) of article 17.151 of the Texas Code of Criminal Procedure provides:

> A defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within: (1) 90 days from the commencement of his detention if he is accused of a felony . . . .

Tex. Code Crim. Proc. art. 17.151, § 1(1). Under this section, a judge has two alternatives when the State is not ready for trial within ninety days after an accused's arrest on a felony charge: "either release the accused on personal bond or reduce the bond amount." *Ex parte Gill*, 413 S.W.3d 425, 429 (Tex. Crim. App. 2013) (citing *Rowe v. State*, 853 S.W.2d 581, 582 (Tex. Crim. App. 1993)); *see* Tex. Code Crim. Proc. art. 17.151, § 1(1). Section 2(2) of article 17.151, however, provides that: "The provisions of this article do not apply to a defendant who is: . . . (2) being detained pending trial of another accusation against the defendant as to which the applicable period has not yet elapsed." Tex. Code Crim. Proc. art. 17.151, § 2(2).

"We review a trial court's decision to deny relief on a claim that the State violated article 17.151 for an abuse of discretion." *Ex parte Craft*, 301 S.W.3d 447, 448–49 (Tex. App.—Fort Worth 2009, no pet.); *see Jones v. State*, 803 S.W.2d 712, 719 (Tex. Crim. App. 1991)

(concluding that, on "state of the record it was not within the trial court's discretion to find the State was timely ready for trial"); *Ex parte Jagneaux*, 315 S.W.3d 155, 157 (Tex. App.—Beaumont 2010, no pet.) (concluding that trial court did not abuse discretion in denying habeas relief on a claim that article 17.151 was violated). "In reviewing the trial court's decision, we view the evidence in the light most favorable to the ruling." *Ex parte Craft*, 301 S.W.3d at 449; *see Ex parte Amezquita*, 223 S.W.3d 363, 367 (Tex. Crim. App. 2006) (noting that "Court 'afford[s] almost total deference to a trial court's factual findings in habeas proceedings, especially when those findings are based upon credibility and demeanor" (citation omitted)). A writ applicant has the burden of proving the facts that would entitle him to relief. *See Ex parte Kimes*, 872 S.W.2d 700, 703 (Tex. Crim. App. 1993).

Further, how article 17.151 operates is a question of statutory construction. Statutory construction is a question of law that we review de novo. *Harris v. State*, 359 S.W.3d 625, 629 (Tex. Crim. App. 2011). "The overarching rule of statutory construction is that we construe a statute in accordance with the plain meaning of its text unless the text is ambiguous or the plain meaning leads to absurd results that the legislature could not possibly have intended." *Ex parte Vela*, 460 S.W.3d 610, 612 (Tex. Crim. App. 2015) (citing *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)). "In ascertaining the plain meaning of a word, we read words and phrases in context and construe them according to the rules of grammar and usage." *Lopez v. State*, 253 S.W.3d 680, 685 (Tex. Crim. App. 2008); *see* Tex. Gov't Code § 311.011 (addressing common and technical usage of words in construing statutes). We also interpret relevant statutes "together

and harmonized, if possible," to give effect to the statutes' provisions. *See Ex parte Gill*, 413 S.W.3d at 430.

**DISCUSSION**

Appellant states his sole appellate issue as follows: "Does Article 17.151, Section 2(2) of the Texas Code of Criminal Procedure make a defendant ineligible for a personal or reduced bond if there are *any* holds/detainers placed on the defendant?" Appellant argues that it is undisputed that he has been continuously confined for more than ninety days without an indictment on the pending felony charges against him in Comal County so that the State could not have been ready for trial on those charges and, therefore, article 17.151 required the trial court to release him on a personal bond or on an amount that he could afford. *See* Tex. Code Crim. Proc. art. 17.151, § 1(1). Appellant further argues that section 2(2) of article 17.151 does not apply to the Hays County hold on the motion to adjudicate guilt or the ICE hold because a person who is subject to a motion to adjudicate guilt or an ICE hold is not "being detained pending trial." *See id.* § 2(2); *see generally Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014) (discussing immigration detainers). Appellant's position is that section 2(2) "only addresses accusations for which the time periods in Section 1 have not expired." Appellant seeks for the trial court's ruling to be reversed, "with an order to grant personal bonds to Appellant on the two felony charges that remain unindicted" and argues that it "then becomes the prerogative of Appellant whether to attempt to post bond on the misdemeanor Motion to Adjudicate, or to be transferred to Hays County to deal with that case while the instant cases are pending."

Among its arguments, the State counters that the pending motion in Hays County to adjudicate guilt falls within the scope of section 2(2) of article 17.151 because "the applicable period has not yet elapsed" as to the "accusation" against appellant in the motion to adjudicate guilt. To support this argument, the State relies on section 21(b–2) of article 42.12, which provides:

> If the defendant has not been released on bail as permitted under Subsection (b-1), *on motion by the defendant* the judge who ordered the arrest for the alleged violation of a condition of community supervision shall cause the defendant to be brought before the judge for a hearing on the alleged violation within 20 days of filing of the motion, and after a hearing without a jury, may either continue, extend, modify, or revoke the community supervision.

Tex. Code Crim. Proc. art. 42.12, § 21(b–2) (emphasis added). The State argues, the "applicable period has not yet elapsed" in section 2(2) of article 17.151 as to the pending motion to adjudicate guilt because appellant has not filed a motion to be heard in Hays County to begin the twenty-day period under section 21(b–2) of article 42.12. *See id*. arts. 17.151, § 2(2); 42.12, § 21(b–2).

Consistent with the objective of article 17.151, section 21(b–2) of article 42.12 is a safeguard against excessive pre-hearing confinement. *See id*. arts. 17.151, 42.12, § 21(b–2); Tex. Gov't Code § 311.023(1) (authorizing court to consider "object sought to be obtained" in construing statute, "whether or not the statute is considered ambiguous on its face"); *Aguilar v. State*, 621 S.W.2d 781, 784 (Tex. Crim. App. 1981) (noting that twenty-day requirement for hearing on motion to revoke "was intended to provide probationers who are not released on bail protection against excessive pre-hearing confinement"). Under the plain language of section 21(b–2), however, the twenty-day period does not begin until a defendant requests a hearing on a motion to adjudicate guilt. *See* Tex. Code Crim. Proc. art. 42.12, § 21(b–2); *Aguilar*, 621 S.W.2d at 784 (noting that

twenty-day requirement for a hearing on a motion to revoke is "triggered . . . by the filing of the appellant's request for a hearing on the State's motion to revoke").

Here the record reflects that, at the time of the trial court's denial of appellant's request for bail to be reduced to a personal bond, Hays County had placed a hold on appellant's release based on the pending motion to adjudicate guilt in that county. Thus, under the plain language of section 2(2) of article 17.151 and section 21(b–2) of article 42.12, appellant was "being detained pending trial"—the revocation hearing—as to "another accusation against [him]"—that he violated the terms of his community supervision. *See* Tex. Code Crim. Proc. arts. 17.151, § 2(2), 42.12, § 21(b–2); *Black's Law Dictionary* 1644 (9th ed. 2009) (defining "trial" to mean "formal judicial examination of evidence and determination of legal claims in an adversary proceeding"); *Webster's Third New Internat'l Dictionary* 14 (defining "accusation" to mean "charge of wrongdoing, delinquency, or fault: the declaration containing such a charge"), 2439 (defining "trial," among other meanings, to mean "the formal examination of the matter in issue in a cause before a competent tribunal for the purpose of determining such issue"). And appellant failed to prove that the "applicable period" as to the motion to adjudicate guilt—20 days from the filing of the motion under article 42.12, section 21(b–2)—had elapsed. *See* Tex. Code Crim. Proc. arts. 17.151, § 2(2), 42.12, § 21(b–2); *Ex parte Kimes*, 872 S.W.2d at 703 (placing burden on writ applicant to prove facts which would entitle applicant to relief); *Ex parte Danziger*, 775 S.W.2d 475, 475–76 (Tex. App.—Austin 1989) (concluding that motion to revoke appellant's probation that was pending in different county supported trial court's denial of appellant's release on personal bond under article

17.151), *overruled in part as stated in Jones*, 803 S.W.2d at 715;[2] *see also Ex parte Gill*, 413 S.W.3d at 430 (applying rule of statutory construction "that requires the two statutes to be read together and harmonized, if possible, giving effect to both").[3]

Appellant cites the opinion in *Ex parte Shaw*, No. 02-12-00116-CR, 2012 Tex. App. LEXIS 10598 (Tex. App.—Fort Worth Dec. 21, 2012), *op. withdrawn and sub. op.*, 413 S.W.3d 498 (Tex. App.—Fort Worth 2013, no pet.), *op. withdrawn sub. nom. Ex parte Shaw*, 395 S.W.3d 819 (Tex. Crim. App. 2013), to support his position that section 2(2) of article 17.151 "does not include holds of any character other than those it specifically addresses" and that the phrase "applicable periods" in that section is limited to the periods contained in section 1 of article 17.151. We find that case factually distinguishable, however, because it did not involve a hold based on a pending motion to adjudicate guilt in a different county but the indictment of another offense, and the defendant in that case did not contend that he was entitled to release on the indicted charge. *See id.* at *3.

Because the record reflects appellant was "being detained pending trial" on the motion to adjudicate guilt "as to which the applicable period ha[d] not elapsed" when the trial court denied appellant's request for habeas relief, we conclude that the trial court did not abuse its discretion. *See Ex parte Jagneaux*, 315 S.W.3d at 157 (applying abuse of discretion standard in

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[2] *See Jones v. State*, 803 S.W.2d 712, 715 (Tex. Crim. App. 1991) ("We hold that Article 17.151 was not effectively struck down by our opinion in *Meshell* simply because it was contained in the same Senate Bill. To the extent it held otherwise, the opinion of the Austin Court of Appeals in *Ex parte Danziger*, supra, is overruled.").

[3] Notably, if the State's motion to adjudicate guilt is granted, appellant again could be precluded from relief under article 17.151 because of section 2(1), which provides that the provisions of article 17.151 do not apply to a defendant who is "serving a sentence of imprisonment for another offense while the defendant is serving that sentence." Tex. Code Crim. Proc. art. 17.151, § 2(1).

affirming trial court's denial of habeas relief on a claim that article 17.151 was violated). Thus, we overrule appellant's issue.[4]

## CONCLUSION

Having overruled appellant's issue, we affirm the trial court's denial of habeas relief.

Melissa Goodwin, Justice

Before Justices Puryear, Goodwin, and Field

Affirmed

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[4] Because we have concluded that provisions of article 17.151 do not apply based on the pending motion to adjudicate guilt in Hays County, we do not address other arguments made by the State to support the trial court's denial of habeas relief. *See* Tex. R. App. P. 47.1.