



NUMBERS 13-15-00368-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

THE STATE OF TEXAS,

Appellant,

v.

RAMON ESCALANTE JIMENEZ,

Appellee.

**On appeal from the 398th District Court
of Hidalgo County, Texas.**

MEMORANDUM OPINION

**Before Justices Rodriguez, Benavides and Perkes
Memorandum Opinion by Justice Perkes**

The State has asked this Court to determine whether the trial court acted without jurisdiction when it granted appellee Ramon Escalante Jimenez's motion for judicial clemency. Specifically, Jimenez sought judicial clemency under article 42.12, section 20(a) of the Texas Code of Criminal Procedure, more than nine years after the trial court

discharged his community supervision.¹ See TEX. CODE CRIM. PROC. ANN. art. 42.12 § 20(a) (West, Westlaw through 2015 R.S.). Because we hold the trial court lacked jurisdiction to act in this case, we reverse and render.

I. BACKGROUND

In 2002, Jimenez pleaded guilty to one count of cocaine possession in the amount of less than one gram, a state jail felony. See TEX. HEALTH & SAFETY CODE ANN. §§ 481.102(3)(D), 481.115(b) (West, Westlaw through 2015 R.S.). Jimenez elected to have the trial court assess punishment. The trial court ordered Jimenez to spend two years' imprisonment in the State Jail Division of the Texas Department of Criminal Justice and to pay a fine of \$550 as well as court costs. The trial court further suspended Jimenez's sentence, placed Jimenez on community supervision for four years, subject to certain conditions. See TEX. CODE CRIM. PROC. ANN. art. 42.12 § 3 (West, Westlaw through 2015 R.S.). In 2006, Jimenez was discharged from community supervision by operation of law.²

In 2015, Jimenez filed a motion for judicial clemency pursuant to article 42.12,

¹ Section 20(a) describes the mechanics of how judicial clemency is granted. See TEX. CODE CRIM. PROC. ANN. art. 42.12 § 20(a) (West, Westlaw through 2015 R.S.). The section states: "Upon the satisfactory fulfillment of the conditions of community supervision, and the expiration of the period of community supervision, the judge, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the community supervision period and shall discharge the defendant. If the judge discharges the defendant under this section, the judge may set aside the verdict or permit the defendant to withdraw the defendant's plea, and shall dismiss the accusation, complaint, information or indictment against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which the defendant has been convicted or to which the defendant has pleaded guilty, except that: [not applicable to the facts of this case]." *Id.*

² In 2003, the State filed a motion to revoke Jimenez's community supervision. In 2006, the trial court signed an order dismissing the State's motion to revoke community supervision based on the State's own motion. There is no formal order from the trial court discharging Jimenez from community supervision, thus, he was discharged from community supervision by operation of law.

section 20(a), requesting that the indictment in this case be dismissed and that his conviction be set aside based on *Cuellar v. State*. 70 S.W.3d 815, 818 (Tex. Crim. App. 2002) (explaining two available types of discharge from community supervision, one of which includes “judicial clemency”). The trial court held a hearing on Jimenez’s motion for judicial clemency and took the matter under advisement. The trial court later granted Jimenez’s request for judicial clemency and ordered that Jimenez’s plea of guilty and corresponding judgment in the underlying case be set aside. It further ordered that all charges, accusations, complaints, and indictments in the underlying cause be dismissed. Finally, the trial court ordered that Jimenez be released “from all penalties and disabilities resulting from” the underlying possession conviction. The State appealed.³ See *id.*, art. 44.01(a)(2) (West, Westlaw through 2015 R.S.) (giving the State a right to appeal a trial court’s order modifying a judgment).

II. JUDICIAL CLEMENCY

By its sole issue, the State contends the trial court acted without jurisdiction when it granted Jimenez judicial clemency, thus making its order void.

A. Jurisdiction of Trial Court to Order Judicial Clemency

A trial court’s jurisdiction refers to that court’s power to hear and make legally binding decisions on the parties involved. See *State v. Dunbar*, 297 S.W.3d 777, 780 (Tex. Crim. App. 2009) (citing *Dears v. State*, 154 S.W.3d 610, 612 (Tex. Crim. App. 2005)). Jurisdiction is “an absolute systemic requirement” and can be raised for the first time on appeal. *Id.* at 780.

³ Jimenez did not file an appellate brief to help us with the resolution of this case.

In criminal cases, a trial court's jurisdiction consists of "the power of the court over the 'subject matter' of the case, conveyed by statute or constitutional provision, coupled with 'personal jurisdiction' over the accused, which is invoked in felony prosecutions by the filing of [an] indictment or information if indictment is waived." *Id.* (quoting *Fairfield v. State*, 610 S.W.2d 771, 779 (Tex. Crim. App. 1981) (panel op.)). A lack of personal or subject-matter jurisdiction deprives a court of any authority to render a judgment. *Ex parte Moss*, 446 S.W.3d 786, 788 (Tex. Crim. App. 2014). Any action taken by a trial court without jurisdiction is void. *Id.* at 789. Generally, if no community supervision is imposed, no motion for new trial or motion in arrest of judgment filed and no appeal is taken, then the trial court's personal jurisdiction over an accused terminates thirty days after sentencing. *Dunbar*, 297 S.W.3d at 780.

When community supervision is ordered, we have previously held that the trial court must order judicial clemency upon or after either mandatory or permissive discharge occurs, but before the trial court loses plenary jurisdiction. See *State v. Perez*, ___ S.W.3d ___, ___, No. 13–15–00367 (Tex. App.—Corpus Christi 2016, no pet. h.). Our sister courts have also taken this approach. See *State v. Shelton*, 396 S.W.3d 614, 619 (Tex. App.—Amarillo 2012, pet. ref'd) (trial court acted without jurisdiction when it set aside a defendant's conviction sixteen years after discharging defendant from community supervision); *State v. Fielder*, 376 S.W.3d 784, 787 (Tex. App.—Waco 2011, no pet.) (trial court lacked jurisdiction to issue an order of judicial clemency more than three years after discharging a defendant).

B. Application

The trial court granted Jimenez judicial clemency in 2015, over nine years after his discharge from community supervision. We conclude the trial court lacked jurisdiction to order judicial clemency in this case, making its order void. See *Ex parte Moss*, 446 S.W.3d at 788; *Shelton*, 396 S.W.3d at 619; *Fielder*, 376 S.W.3d at 787. We sustain the State's sole issue on appeal.

III. CONCLUSION

We reverse the trial court's order granting Jimenez judicial clemency and render judgment ordering Jimenez's motion for judicial clemency be dismissed for lack of jurisdiction.

GREGORY T. PERKES
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
14th day of July, 2016.