



NUMBER 13-16-00661-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

CHRIS GONZALEZ A/K/A
CHRIS GONZALES A/K/A
CHRISTOPHER GONZALEZ,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

On appeal from the 94th District Court
of Nueces County, Texas.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Contreras and Hinojosa
Memorandum Opinion by Justice Contreras**

Appellant Chris Gonzalez a/k/a Chris Gonzales a/k/a Christopher Gonzalez contends by a single issue that the trial court erred by not affording him the opportunity to withdraw his plea of nolo contendere after it required him to participate in the drug-

rehab program at a Substance Abuse Felony Punishment Facility (SAFPF) as a condition of his community supervision. We affirm.

I. BACKGROUND

On August 22, 2016, appellant pled nolo contendere to three separate felony charges of burglary of a building and asked the trial court to assess punishment. See TEX. PENAL CODE ANN. § 32.02 (West, Westlaw through 2017 1st C.S.). There was no plea agreement between appellant and the State, and appellant was convicted and sentenced for each charge. This appeal stems from appellant's sentencing for one of those three charges. Before sentencing, appellant filed a motion for community supervision, and the trial court admonished appellant that the sentences for these three offenses would run concurrently. The trial court also informed appellant that he could receive between two to ten years in state jail for each charge.¹ In the present case, appellant was sentenced to ten years in state jail, but the sentence was suspended and community supervision was imposed for ten years. In the other two burglary-of-a-building cases, appellant was sentenced to five years in state jail. The judgment of conviction states that the sentences are to run concurrently.

At sentencing, appellant was informed that he would have to participate in the drug-rehab program offered at SAFPF as a requirement of his community supervision imposed for the present case. SAFPF is run by the Texas Department of Criminal Justice (TDCJ) and houses an in-prison drug-treatment program in which appellant is required to participate for an indeterminate term lasting between three months to twelve months.

¹ Appellant's punishment for each of the three burglary-of-a-building charges was enhanced due to his prior convictions for two state-jail felonies. See TEX. PENAL CODE ANN. § 12.425(a) (West, Westlaw 2017 through 1st C.S.).

Appellant did not object to the inclusion of SAFPF as one of his conditions for community supervision nor did he attempt to withdraw his plea. This appeal followed.

II. DISCUSSION

Appellant argues that the trial court exceeded the range of punishment under which he was admonished, and therefore the trial court should have given him the opportunity to withdraw his plea. Appellant's argument is based on the idea that the drug-rehab program at SAFPF amounts to an additional sentence imposed on him consecutively to the others because it requires him to be in in-patient care at a TDCJ facility as a condition of his community supervision. We disagree.

"The sentence is that part of the judgment . . . that orders that the punishment be carried into execution in the manner prescribed by law." TEX. CODE CRIM. PROC. ANN. art. 42.02 (West, Westlaw 2017 through 1st C.S.). On the other hand, community supervision involves the suspension of a sentence. See *id.* art. 42A.001 (West, Westlaw 2017 through 1st C.S.); see also *Chauncey v. State*, 877 S.W.2d 305, 307 (Tex. Crim. App. 1994) (stating defendant was placed on community supervision as alternative to sentence). In other words, "[t]he sentence is the term of imprisonment assessed, while community supervision deals with whether that term of imprisonment may be suspended and the defendant supervised in his local community." *Mayes v. State*, 353 S.W.3d 790, 794 (Tex. Crim. App. 2011); see *Speth v. State*, 6 S.W.3d 530, 532 (Tex. Crim. App. 2000). "The period of supervision is not a sentence." *Mayes*, 353 S.W.3d at 794. The Texas Code of Criminal Procedure specifically authorizes a trial judge to impose a treatment at SAFPF as a condition for community supervision. See TEX. CODE CRIM. PROC. ANN. arts. 42A.053, 42A.301, 42A.303 (West, Westlaw through 2017 1st C.S.).

Here, appellant was admonished that his sentences would run concurrently and that he could receive between two to ten years for each of the three offenses. The punishment for appellant prescribed by law is the sentence of ten-years in state jail; however, the trial court placed appellant on community supervision, as he requested, and suspended the ten-year state-jail sentence. The fact that, as a condition of his community supervision, SAFPF requires him to be housed at a TDCJ facility for the duration of a drug-treatment program does not amount to an additional sentence that appellant will have to serve consecutively, but is simply a condition for having the ten-year sentence suspended. See TEX. CODE CRIM. PROC. ANN. arts. 42A.001, 42A.053, 42A.301, 42A.303; see also *Taylor v. State*, 126 S.W.3d 201, 204 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (“SAFPF is not a jail, nor is it treated like one for purposes of the Code of Criminal Procedure’s provisions concerning credit for time served.”). As noted, the trial court was explicitly authorized by statute to require as a condition of appellant’s community supervision that appellant participate in the program at SAFPF. See TEX. CODE CRIM. PROC. ANN. arts. 42A.053, 42A.301, 42A.303. Therefore, contrary to appellant’s argument, the sentences assessed for all three charges run concurrently and fall within the range of punishment admonished; the community supervision requirement of participating in the drug-treatment program at SAFPF is not another sentence.

In any event, appellant has waived any issue regarding the imposition of SAFPF as a condition of his community supervision. The Texas Court of Criminal Appeals has stated that:

An award of community supervision is not a right, but a contractual privilege, and conditions thereof are terms of the contract entered into between the trial court and the defendant. Therefore, conditions not objected to are affirmatively accepted as terms of the contract. Thus, by entering in the

contractual relationship without objection, a defendant affirmatively waives any rights encroached upon by the terms of the contract. A defendant who benefits from the contractual privilege of [community supervision] must complain at trial to conditions he finds objectionable.

Speth, 6 S.W.3d at 534–35.

Here, the trial court did not impose an additional sentence on appellant when it required him to participate in the drug-treatment program at SAFPF, and appellant did not object to the inclusion of this as one of his conditions for community supervision when he was sentenced. We overrule appellant’s single issue.²

III. CONCLUSION

We affirm the judgment of the trial court.

DORI CONTRERAS
Justice

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

Delivered and filed the
9th day of November, 2017.

² In his brief, appellant cites article 26.13 of the Texas Code of Criminal Procedure as support for the proposition that he should have been afforded an opportunity to withdraw his plea in the event that his sentence exceeded the range of punishment admonished. However, article 26.13 gives a defendant the right to withdraw his plea of *nolo contendere* “should the court reject the [plea] agreement” entered into between the defendant and the State. TEX. CODE CRIM. PROC. ANN. art. 26.13 (West, Westlaw through 2017 1st C.S.). This is inapplicable here as there was no plea agreement between appellant and the State.