

**NOS. 12-11-00164-CR
12-11-00165-CR**

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>GLENN AUTHAR WILLIAMS, APPELLANT</i>	§	<i>APPEAL FROM THE 114TH</i>
<i>V.</i>	§	<i>JUDICIAL DISTRICT COURT</i>
<i>THE STATE OF TEXAS, APPELLEE</i>	§	<i>SMITH COUNTY, TEXAS</i>

MEMORANDUM OPINION

Glenn Authar Williams appeals his convictions for aggravated sexual assault of a child and possession of a weapon in a prohibited place. In his sole issue on appeal, Appellant argues that the trial court’s judgment should be reformed to accurately reflect the proceedings below. We modify the judgment and affirm as modified.

BACKGROUND

In 2010, the victim, a twelve year old female, attended a high school football game in Tyler, Texas. While there, she met with a group of people, including Appellant. After the game, Appellant and the victim traveled to a home. The victim stated that the group entered a back bedroom for the purpose of smoking. The victim noticed that her phone was missing, and when she asked about it, she was told by one of the young men in the room that she would have to “work” for it if she wanted it returned to her. Shortly thereafter, most of the group left the room. However, Appellant and two other males had sex with the victim. The victim did not initially report the incident to anyone, but later told her mother what occurred, and an investigation was undertaken by law enforcement.

In the meantime, approximately two weeks after the sexual assault, an officer observed that

Appellant was intoxicated at a Chapel Hill football game. Appellant was asked to leave, but he refused to leave the stadium and was arrested. During a search incident to the arrest, illegal brass knuckles were found in Appellant's possession.

In December 2010, as a result of these incidents, Appellant was indicted for the offenses of aggravated sexual assault of a child¹ and possession of a weapon in a prohibited place.² Appellant entered an open plea of "guilty" to each offense and requested that the trial court assess punishment. After a punishment hearing, at which the State and Appellant presented extensive evidence, the court sentenced Appellant to forty years of imprisonment for the aggravated sexual assault offense and ten years of imprisonment for the weapon offense. This appeal followed.

JUDGMENT

In his sole issue, Appellant asks that we reform the trial court's judgment to accurately reflect the proceedings at trial. The State has not filed a brief in opposition to Appellant's request.

During the trial court's punishment hearing, the trial court stated that "[t]he Court also finds that drugs and alcohol contributed to the commission of these offenses and recommends drug and alcohol treatment in the penitentiary." However, the trial court's written judgment does not reflect this recommendation.

A defendant's sentence must be pronounced orally in his presence. TEX. CODE CRIM. PROC. ANN. art. 42.03, § 1(a) (West Supp. 2011). The judgment, including the sentence assessed, is merely the written declaration and embodiment of that oral pronouncement. *Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004). When there is a conflict between the oral pronouncement of sentence and the sentence in the written judgment, the oral pronouncement generally controls. *Id.*; *Ex parte Madding*, 70 S.W.3d 131, 135 (Tex. Crim. App. 2002). Further, when it has the necessary information before it, an appellate court may correct a trial court's written judgment to reflect its oral pronouncement so that the record speaks the truth. *Thompson v. State*, 108 S.W.3d 287, 290 (Tex. Crim. App. 2003); *Ingram v. State*, 261 S.W.3d 749, 754 (Tex. App.—Tyler 2008, no pet.). The Texas Rules of Appellate Procedure expressly authorize us to modify the judgment of the trial court. TEX. R. APP. P. 43.2.

Under the circumstances presented in this case, the record is clear that the trial court found that drugs and alcohol contributed to the commission of the offense and recommended that

¹ See TEX. PENAL CODE ANN. § 22.021 (West Supp. 2011).

² See TEX. PENAL CODE ANN. § 46.03 (West 2011).

Appellant complete drug and alcohol treatment while serving his sentence. Therefore, we sustain Appellant's sole issue.

DISPOSITION

We have sustained Appellant's sole issue. Accordingly, we *modify* the trial court's judgment to reflect that the trial court found that drugs and alcohol contributed to the commission of the offense and recommended treatment while Appellant is incarcerated. As *modified*, we *affirm* the judgment of the trial court.

JAMES T. WORTHEN
Chief Justice

Opinion delivered May 16, 2012.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)