

NO. 12-17-00377-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

EX PARTE: § *APPEAL FROM THE*
FRANCISCO DOMINGUEZ DENOVA § *COUNTY COURT AT LAW NO. 3*
§ *SMITH COUNTY, TEXAS*

MEMORANDUM OPINION

Francisco Denova appeals his conviction for misdemeanor theft. In a single issue, Appellant contends the trial court erred by failing to properly admonish him before his guilty plea. We affirm.

BACKGROUND

Appellant was charged by information with the theft of roofing shingles valued at \$500 or more but less than \$1,500, a misdemeanor.¹ Pursuant to a plea agreement, Appellant pleaded “guilty” and was sentenced to confinement for three hundred sixty-four days probated for twenty months. Appellant filed an application for writ of habeas corpus alleging the trial court failed to properly admonish him regarding the immigration consequences of his plea, which the trial court denied. This appeal followed.

ADMONITIONS

In his sole issue, Appellant contends that the trial court failed to properly admonish him of the immigration consequences of his plea.

¹ See TEX. PENAL CODE ANN. § 31.03(a), (e)(3) (West Supp. 2017).

Standard of Review and Applicable Law

In reviewing the trial court's decision to grant or deny habeas corpus relief, we view the facts in the light most favorable to the trial court's ruling and uphold that ruling absent an abuse of discretion. *Ex parte Wheeler*, 203 S.W.3d 317, 324 (Tex. Crim. App. 2006). A trial court abuses its discretion when it acts without reference to any guiding rules or principles or when it acts arbitrarily or unreasonably. *Ex parte Ali*, 368 S.W.3d 827, 830 (Tex. App.—Austin 2012, pet. ref'd).

Prior to accepting a guilty plea, the trial court must admonish the defendant. TEX. CODE CRIM. PROC. ANN. art. 26.13(a) (West Supp. 2017). The admonitions must include, among other things, the fact that if the defendant is not a citizen of the United States of America, a plea of guilty may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law. *Id.* art. 26.13(a)(4). The admonitions may be given orally or in writing. *Id.* art. 26.13(d) (West Supp. 2017). Substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court. *Id.* art. 26.13(c) (West Supp. 2017).

The admonitions of Article 26.13 serve to protect several constitutional rights of the defendant, but the statutory admonitions are not constitutionally required. *VanNortrick v. State*, 227 S.W.3d 706, 708 (Tex. Crim. App. 2007). Thus, a trial court's failure to provide the admonitions is nonconstitutional error subject to a harm analysis under Texas Rule of Appellate Procedure 44.2(b). *Id.* We review nonconstitutional error to determine whether it affected the defendant's substantial rights. TEX. R. APP. P. 44.2(b); *Johnson v. State*, 43 S.W.3d 1, 4 (Tex. Crim. App. 2001). An error affects a substantial right if it had a substantial and injurious effect or influence on the verdict. *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997). When examining nonconstitutional error in the context of a guilty plea, the critical issue is whether we have fair assurance that the defendant's decision to plead guilty would not have changed had the trial court provided the mandatory admonitions. *Anderson v. State*, 182 S.W.3d 914, 919 (Tex. Crim. App. 2006). An error that does not affect a substantial right must be disregarded. TEX. R. APP. P. 44.2(b); *Johnson*, 43 S.W.3d at 4.

Analysis

On appeal, Appellant contends that he was not adequately warned about the potential consequences of his guilty plea. We disagree.

Appellant was convicted of theft of property in an amount more than \$500 but less than \$1,500. This is a class A misdemeanor. *See* TEX. PENAL CODE ANN. § 31.03(e)(3). The Court of Criminal Appeals has repeatedly stated that the requirements of Article 26.13 do not apply to misdemeanor cases. *State v. Guerrero*, 400 S.W.3d 576, 589 (Tex. Crim. App. 2013); *Gutierrez v. State*, 108 S.W.3d 304, 309 (Tex. Crim. App. 2003) (“We consistently have held that article 26.13 does not apply to misdemeanor cases.”); *Johnson v. State*, 614 S.W.2d 116, 120 n.1 (Tex. Crim. App. 1981) (collecting cases) (“However commendable it may be for a trial judge to admonish one accused of a misdemeanor offense, as he must where a person is charged with a felony, see Art. 26.13 . . . there is no requirement in Texas law for a trial court to admonish an accused person of anything if the offense is classified as a misdemeanor.”).

However, the record reflects that Appellant was given the following written admonishment:

5. CITIZENSHIP: If you are not a citizen of the United States of America, a plea of guilty or nolo contendere for this offense may result in deportation, the exclusion from admission to the country, or the denial of naturalization under federal law.

Appellant signed the plea admonishment indicating that he understood its contents. Furthermore, the trial court asked Appellant if he signed the warnings and whether he understood them, to which Appellant answered that he had and did. The written warning given by the trial court substantially complies with the requirements of Article 26.13. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13(a)(4), (d). Thus, even though the trial court was not required to admonish Appellant in accordance with Article 26.13, the record shows that the trial court did admonish Appellant and fails to show that Appellant was not made aware of his rights and the consequences of his misdemeanor plea of guilty. *Meraz v. State*, 950 S.W.2d 739, 742 (Tex. App.—El Paso 1997, no pet.). Accordingly, we overrule Appellant’s sole issue.

DISPOSITION

Having overruled Appellant’s single issue, we *affirm* the trial court’s judgment.

GREG NEELEY
Justice

Opinion delivered March 29, 2018.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 29, 2018

NO. 12-17-00377-CR

EX PARTE: FRANCISCO DOMINGUEZ DENOVA

Appeal from the County Court at Law No. 3
of Smith County, Texas (Tr.Ct.No. 003-81713-14)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Greg Neeley, Justice.

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