

Reversed and Remanded and Opinion filed February 17, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00412-CR

JOSHUA BRENT WELCH, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause No. 678,204

OPINION

Appellant was charged by indictment with the offense of aggravated assault. Upon the State's recommendation, the trial court accepted appellant's plea of *nolo contendere* to the charged offense, found sufficient evidence to substantiate appellant's guilt, but withheld an adjudication of guilt, and placed appellant on community supervision for a period of seven years. The State later moved to adjudicate appellant's guilt. The trial court revoked his community supervision and assessed punishment at eighteen years confinement in the Texas Department of Criminal Justice—Institutional Division.

Appellant raises two points of error each challenging the voluntariness of his initial plea when appellant was advised the applicable range of punishment was that of a third degree felony, i.e., not less

than two nor greater than ten years confinement. The State forthrightly concedes the trial court entered an illegal sentence, noting that at the time of the commission of the alleged offense, October 23, 1993, the offense was a third degree felony whereas at the time of the adjudication of guilt, March 3, 1999, the offense was a second degree felony. The State requests that we remand the case to the trial court for a new punishment hearing. In support of its request, the State cites Texas Code of Criminal Procedure article 44.29(b) and *Levy v. State*, 818 S.W.2d 801, 803 (Tex. Crim. App. 1991).

In light of the illegal sentence of eighteen years and pursuant to the State's request, we remand this case to the trial court for the assessment of punishment within the range prescribed for a third degree felony.¹

/s/ Charles F. Baird
Justice

Judgment rendered and Opinion filed February 17, 2000.

Panel consists of Justices Hudson, Wittig, and Baird.²

Do Not Publish — TEX. R. APP. P. 47.3(b).

¹ We believe this remedy eliminates the need to further address appellant's two points of error, which contend his initial plea was involuntary because he pleaded to a third degree felony offense but was subsequently sentenced to a second degree felony.

² Former Judge Charles F. Baird sitting by assignment.