Affirmed and Opinion filed March 14, 2002.

In The

Fourteenth Court of Appeals

NO. 14-01-00251-CR

LEE DEWAN COLLINS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 731,526

O P I N I O N

In six points of error, appellant, Lee Dewan Collins, appeals the revocation of his deferred adjudication and the life sentence assessed by the trial court. We affirm the judgment of the trial court.

FACTUAL BACKGROUND

Appellant entered a plea of guilty for the first degree felony offense of delivery of cocaine weighing more than four grams and less than two-hundred grams. The court deferred adjudication of appellant's guilt and sentenced him to seven years' community

supervision and a $500 fine. Under the terms of community supervision, appellant was required to, *inter alia*, (1) commit no offense against the laws of this or any other state; (2) avoid injurious or vicious habits; (3) avoid persons or places of disreputable or harmful character; (4) pay certain fees and fines; and (5) report to a community supervision officer on the twenty-fourth of each month. The State filed a motion to adjudicate appellant's guilt for violations of his probation.[1] The court adjudicated appellant's guilt and sentenced him to life imprisonment in the Institutional Division of the Texas Department of Criminal Justice.

ISSUES PRESENTED

In his first two points of error, appellant complains the trial court committed fundamental error in violation of his federal and state constitutional rights to compulsory process by failing to require evidence in support of his guilty plea. In appellant's third and fourth points of error, he complains the trial court committed fundamental error in proceeding to a judgment of guilt where the record is silent about whether appellant waived his federal and state constitutional rights to compulsory process. In appellant's fifth and sixth points of error, he complains the trial court committed reversible error in assessing punishment at life imprisonment because the sentence was not proportional to the offense committed and therefore constitutes cruel and unusual punishment in violation of the Texas Constitution and the Eighth and Fourteenth Amendments to the United States Constitution.

JURISDICTION

The State contends we have no jurisdiction to address appellant's first four points of error because, when placed on deferred adjudication probation, a defendant may raise issues relating to the original plea proceeding only in appeals taken when deferred adjudication probation is first imposed. *Manuel v. State*, 994 S.W.2d 658, 661–62 (Tex. Crim. App.

[1] The State alleged appellant violated the terms and conditions of community supervision by committing aggravated robbery, failing to report to his supervision officer from October 1998 through May 1999, and failing to pay a designated fine and court costs.

1999). There are two recognized exceptions to *Manuel*: (1) the "void judgment" exception and (2) the "habeas corpus" exception. *Nix v. State*, No. 793-00, slip op. at 2, 2001 WL 717453, at *2 (Tex. Crim. App. June 27, 2001). Only the void judgment exception is at issue in this case. A void judgment is a "nullity" and can be attacked at any time. *Id.* (citing *Ex parte Patterson*, 969 S.W.2d 16, 19 (Tex. Crim. App. 1998)). If the original judgment imposing probation was void, then the trial court would have no authority to revoke probation because a void judgment leaves nothing to revoke. *Id.* In past cases involving probation, the Court of Criminal Appeals has recognized that a defendant, after revocation of his probation, can raise error regarding the original plea hearing if the error would render the original judgment void. *Id.* (citing *Corley v. State*, 782 S.W.2d 859, 860 n.2 (Tex. Crim. App. 1989); *Gonzales v. State*, 723 S.W.2d 746, 747 n.3 (Tex. Crim. App. 1987)). The void judgment exception also applies to deferred adjudication probation. *Id.*

A judgment is void when (1) a document intended to be a charging instrument (*i.e.*, indictment, information, or complaint) does not satisfy the constitutional requirements of a charging instrument; (2) the trial court does not have subject matter jurisdiction over the offense charged, such as when a misdemeanor involving official misconduct is tried in a county court at law; (3) the record reflects that no evidence supports a conviction; or (4) an indigent defendant is required to face criminal trial proceedings without an appointed attorney, when the defendant has not waived the right to counsel. *Id.*

Although a judgment is void if no evidence supports the conviction, the record must leave no question about the existence of such a fundamental defect. *Id.* If the record does not contain a court reporter's transcription of the original plea hearing, then a conviction is not void because we are unable to ascertain whether evidence was actually introduced to support the plea. *See id.* at 3. At the original plea proceeding, appellant waived his right to have a court reporter record his plea. Consequently, we cannot determine what evidence, if any, was offered in support of his guilt. Therefore, this case does not fall within the "void judgment" exception. Because appellant was required to appeal points one and two at the

time he was placed on deferred adjudication probation, we have no jurisdiction to address them now. *Manuel*, 994 S.W.2d at 661–62.

In his third and fourth points of error, appellant complains that the record is silent about whether he waived the right to compulsory process. Federal law does not require that a defendant expressly waive his right to compulsory process. FED. R. CRIM. P. 11(c). Texas law only requires an overt waiver of three rights: (1) the right to a jury trial; (2) the right to confront one's accusers; and (3) the right to refuse to testify at trial. *Vanderburg v. State*, 681 S.W.2d 713, 717 (Tex. App.— Houston [14th District] 1984, pet. ref'd). Because an overt waiver of compulsory process is not required, there is no fundamental error. Appellant failed to timely appeal when he was placed on deferred adjudication probation. Accordingly, we have no jurisdiction over points three and four. *Manuel*, 994 S.W.2d at 661-62.

CRUEL AND UNUSUAL PUNISHMENT

In appellant's fifth and sixth points of error, he contends his sentence constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution and in violation of article 1, section 13 of the Texas Constitution. *See* U.S. CONST. amends. VIII, XIV; TEX. CONST. art. I, § 13. Specifically, appellant contends the trial court erred because appellant's sentence is not proportionate to the offense committed. The State claims appellant has waived any error by raising this argument for the first time on appeal.

It is well established that almost every right, constitutional and statutory, may be waived by failing to object. *Solis v. State*, 945 S.W.2d 300, 301(Tex. App. — Houston [1st District] 1997, pet. ref'd) (citing *Smith v. State*, 721 S.W.2d 844, 855 (Tex. Crim. App. 1986)). To preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection, or motion stating the specific grounds for the ruling desired. TEX. R. APP. P. 33.1. The purpose of the rule is to allow opposing counsel to remove the objection or to allow the trial court to cure any harm. *See Zillender v. State*, 557 S.W.2d 515,

517 (Tex. Crim. App. 1977). Appellant did not object at trial to the alleged disproportionality of the sentence, nor did he file a motion for new trial alleging his sentence was cruel and unusual. Appellant has thus waived any error. *See Chapman v. State*, 859 S.W.2d 509, 515 (Tex. App.—Houston [1st Dist.] 1993), *rev'd on other grounds*, 921 S.W.2d 694 (Tex. Crim. App. 1996) (holding that failure to object to sentence as cruel and unusual waives error).

In conclusion, we dismiss points one through four for lack of jurisdiction. Because appellant has waived error for points five and six, we affirm.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed March 14, 2002.
Panel consists of Justices Yates, Seymore, and Guzman.
Do Not Publish — TEX. R. APP. P. 47.3(b).