Affirmed and Opinion filed March 23, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00203-CR

WILLIE EUGENE CROCKETT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause No. 729,208

MEMORANDUM OPINION[1]

After entering a guilty plea and waiving his right to a jury trial, the trial court found Willie Eugene Crockett, appellant, guilty of aggravated sexual assault of a child. *See* TEX. PEN. CODE ANN. § 22.021(a)(1)(B)(i)(Vernon Supp. 2000). The trial court assessed punishment at fifteen years in the Texas Department of Criminal Justice, Institutional Division. For two reasons, we affirm the trial court's judgment: (1) Article 1.15 of the Texas Code of Criminal Procedure neither prohibits a defendant from offering

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[1] *See* TEX. R. APP. P. 47.1

evidence nor precludes the trial court from considering a defendant's evidence; and (2) neither State nor federal law requires a defendant to specifically waive the right to compulsory process.

Appellant challenges the constitutionality of Article 1.15 of the Texas Code of Criminal Procedure in four points of error. He argues that article 1.15 is unconstitutional for denying his federal and state rights to compulsory process, since it prohibits him from presenting evidence. Additionally, appellant argues that the trial court committed fundamental error in proceeding to find him guilty when he did not waive his federal or state rights to compulsory process. We disagree and find no merit to these points of error.

Article 1.15 reads as follows:

> No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded, unless the defendant, upon entering a plea, has in open court in person waived his right of trial by jury in writing in accordance with Articles 1.13 and 1.14; provided, however, *that it shall be necessary for the State to introduce evidence in the record showing the guilt of the defendant and said evidence shall be accepted by the court as the basis for its judgement* and in no event shall a person charged be convicted upon his plea without sufficient evidence to support the same. The evidence may be stipulated if the defendant in such case consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses, and further consents either to an oral stipulation of the evidence and testimony or to the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence in support of the judgment of the court. Such waiver and consent must be approved by the court in writing, and be filed in the file of the papers of the cause. (emphasis added).

TEX. CODE CRIM. PROC. ANN. Art. 1.15 (Vernon Supp. 2000). In his first two points of error, appellant argues that under the statute, the court must determine his guilt or innocence based only on the evidence the State offers. He argues that the language of the statute, which reads, "it shall be necessary for the State to introduce evidence into the record showing the guilt of the defendant . . .", expressly precludes the court from considering evidence the defendant offers. Appellant misconstrues the purpose and effect of article 1.15, and we have expressly rejected this argument. *See Vanderburg v. State*, 681 S.W.2d 713 (Tex. App.—Houston [14th Dist.] 1985, pet. ref'd).

Article 1.15 is a procedural safeguard; it ensures that no person will be convicted of a felony on a guilty plea without sufficient evidence of guilt. *See Lyles v. State*, 745 S.W.2d 567 (Tex.

App.—Houston [1st Dist.] 1988, pet. ref'd). The article maintains the burden of proof on the State, even when a defendant enters a plea of guilty or nolo contendere. *See id.* "Nothing in article 1.15 prohibits the court from considering testimony produced through cross-examination of the state's witnesses or by the defense putting on its own evidence through rebuttal witnesses." *Vanderburg*, 681 S.W.2d at 718. In addition, this record does not reflect that appellant was prevented from introducing evidence, or that he even attempted to introduce evidence. Consequently, we overrule appellant's first two points of error.

In his third and fourth points of error, appellant contends that the trial court committed fundamental error since the record does not indicate whether appellant waived his federal or state right to compulsory process. We have also rejected this issue, since neither United States or Texas law requires a defendant to expressly waive the right to compulsory process. *See Vanderburg*, 681 S.W.2d at 717. The United States Supreme Court has held that a defendant must specifically waive three federal rights when entering a guilty plea: the privilege against compulsory self-incrimination, the right to a jury trial, and the right to confront one's accusers. *See Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969). The record shows the appellant waived these rights when he entered his guilty plea. The right to compulsory process is not one of the fundamental rights; Texas does not include it among the constitutional rights a defendant must waive. *See Vanderburg*, 681 S.W.2d at 717.

We find no requirement that appellant must specifically waive his right to compulsory process. Appellant's third and fourth points of error are overruled.

The judgment of the trial court is affirmed.

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Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed March 23, 2000.

Panel consists of Justices Yates, Fowler and Edelman.

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