

Affirmed and Opinion filed April 13, 2000.



In The
Fourteenth Court of Appeals

NO. 14-98-00543-CR & 14-98-00544-CR, & 14-98-00545-CR

ROBERT CORRAL TUNWAR, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 753,625 & 756,107 & 756,108

OPINION

Robert Corral Tunwar, appellant, was charged with attempted capital murder, aggravated sexual assault and aggravated robbery. On December 8, 1997, appellant signed waivers of constitutional rights, agreements to stipulate and judicial confessions in all three cases, along with written admonishment forms. The court ordered a presentence investigation prior to sentencing. On February 23, 1998, appellant filed motions to withdraw his pleas of guilty. After a hearing at which appellant and his mother testified, the motions were denied. In a single point of error he argues the trial court erred in not permitting him to withdraw his pleas of guilty. We affirm.

The record reflects that appellant was given the full battery of statutory warnings. His signature and initials acknowledged that he received these warnings and that he understood the consequences of his guilty plea. Moreover, his trial attorney and the trial court attested that appellant appeared to understand his situation and the consequences of pleading guilty.

A defendant may withdraw his guilty plea as a matter of right only before judgment is pronounced or the case has been taken under advisement. *Jackson v. State*, 590 S.W.2d 514, 515 (Tex. Crim. App. 1979). However, once the trial court has taken a case under advisement, a decision on permitting the defendant to withdraw his guilty plea is committed to the sound discretion of the trial court. *Id.* Furthermore, it is well-settled that passage of a case for pre-sentence investigation constitutes “taking the case under advisement,” despite the fact that no punishment has been assessed. *DeVary v. State*, 615 S.W.2d 739, 740 (Tex. Crim. App. 1981); *Stone v. State*, 951 S.W.2d 205, 207 (Tex. App.–Houston [14th Dist.]1997, no pet.); *Davis v. State*, 861 S.W.2d 25, 26 (Tex. App.–Houston [14th Dist.] 1993, pet. ref’d).

Because this is a matter committed to the trial court’s discretion, we consider whether the court acted unreasonably or arbitrarily; put another way, whether the trial court acted without reference to any guiding rules and principles. *Stone*, 951 S.W.2d at 207.

Generally, a request to withdraw a plea is untimely if it is made a substantial time after the case has been taken under advisement. *See, e.g., DeVary*, 615 S.W.2d at 740 (trial court did not abuse its discretion when request to withdraw plea came more than two months after taking plea under advisement); *Stone*, 951 S.W.2d at 207 (same). Here our record shows appellant sought to withdraw his plea more than two months after the trial court took the plea under advisement, and a mere two days before a scheduled punishment hearing. Given this delay, we find the trial court did not abuse its discretion by denying appellant’s motions to withdraw his plea.

The judgment of the trial court is therefore affirmed.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed April 13, 2000.

Panel consists of Justices Sears, Draughn, and Hutson-Dunn.*

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

* Senior Justices Ross A. Sears, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.