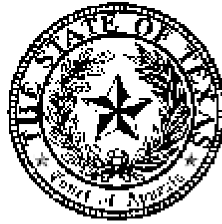
Affirmed and Opinion filed May 3, 2001.



In The

Fourteenth Court of Appeals

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NO. 14-98-01364-CR

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CHARLES CONSTANTINE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 795307

O P I N I O N

As a result of a plea bargain agreement, appellant, Charles Constantine, pled guilty to the offense of possession of cocaine with intent to deliver, and the trial court assessed punishment at five years' confinement, in accordance with the terms of the plea bargain agreement. In his sole point of error, appellant argues his plea was involuntary because his trial counsel allegedly did not investigate his case. We affirm.

In his sole point of error, appellant argues his plea was involuntary because his trial counsel allegedly did not properly investigate his case.[1] Specifically, appellant claims he

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[1] Traditionally, voluntariness issues may be asserted for the first time on appeal notwithstanding a guilty plea pursuant to a plea bargain. *See Flowers v. State*, 935 S.W.2d 131, 133-34 (Tex. Crim. App.

would not have entered the plea agreement because his appointed counsel misinformed him regarding the availability of two co-defendants to testify on his behalf.

To determine whether the plea was entered voluntarily, the entire record must be considered. *See Williams v. State*, 522 S.W.2d 483, 485 (Tex. Crim. App. 1975). Plus, when an appellant states at the plea hearing that his plea is knowing and voluntary, the burden shifts to appellant to show that he entered the plea without understanding the consequences of the plea. *See Fuentes v. State*, 688 S.W.2d 542, 544 (Tex. Crim. App. 1985); *Richard v. State*, 788 S.W.2d 917, 920 (Tex. App.—Houston [1st Dist.] 1990, no pet.).

Because appellant waived a court reporter at the plea hearing, he has failed to bring forward any evidence to show he did not enter his plea voluntarily. Because he did not meet this burden, we must presume appellant was properly admonished and his plea was entered knowingly and voluntarily. *See Miller v. State*, 879 S.W.2d 336, 338 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd) (holding that record showing defendant received proper admonishments is prima facie showing that guilty plea was knowing and voluntary). Accordingly, we overrule appellant's first point of error and affirm his conviction.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed May 3, 2001.
Panel consists of Justices Sears, Cannon, and Andell.**
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1996); *Moore v. State*, 4 S.W.3d 269, 272 (Tex. App.—Houston [14th Dist.] 1999, no pet.). The court of criminal appeals, however, has recently determined that under Appellate Rule 25.2(b)(3), voluntariness may not be raised in a direct appeal following a plea-bargained felony conviction, unless the defendant obtains the permission of the trial court. *See Cooper v. State*, No. 1100-99, 2001 WL 321579 (Tex. Crim. App. April 4, 2001). The rule in *Cooper* does not apply here because appellant received the trial court's permission to appeal.

** Senior Justices Ross A. Sears, Bill Cannon, and Former Justice Eric Andell sitting by assignment.