

**Affirmed in Part, Reversed and Remanded in Part, and Majority and Concurring and Dissenting Opinions filed May 10, 2001.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-99-00722-CR**  
**NO. 14-99-00723-CR**  
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**JOSEPH BERNARD HARRIS and**  
**RODERICK TRAVERSE WALKER, Appellants**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 228th District Court**  
**Harris County, Texas**  
**Trial Court Cause Nos. 804,675 and 804,676**

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**CONCURRING AND**  
**DISSENTING OPINION**

I differ with the majority opinion in two respects. First, with regard to Harris's first issue for review, I do not agree that the record leaves uncertainty as to whether, absent the improper argument, the jury would have imposed imprisonment rather than probation. The jury charge instructed that the jury could recommend probation only if, among other things,

it assessed punishment not to exceed ten years confinement.<sup>1</sup> By imposing fifteen years confinement for both appellants, the jury unequivocally indicated that probation was not a possibility for either. Therefore, I would affirm Harris's punishment and dissent from the majority opinion to that extent.

Secondly, with regard to Walker's points of error, I do not agree that the State's questions to Walker (a) whether it would have been wise to plead not guilty and (b) whether he would have pled guilty to Judge Poe, invaded the attorney-client privilege. Walker argues, and the majority opinion apparently concludes, that the attorney-client privilege was violated because "In order to confirm [that Walker knew Judge Poe would not have given him probation], the State would have necessarily probed into what advice Walker's lawyer had given him regarding the best way to handle the case."

On the contrary, these questions did not ask what Walker had been advised by his lawyer, but only for his own state of mind, if any, on those subjects. The majority's position necessarily assumes that Walker had no prior experience with, or other understanding about, pleading guilty or Judge Poe on which to base his own opinion, but Walker's trial counsel did not seek to voir dire him to establish any such foundation for an objection. Accordingly, each question could have been answered according to its stated scope without involving any attorney-client communications, if indeed there even were any on this subject, which the record does not reflect. Therefore, I concur in the majority's overruling of Walker's points of error for lack of error rather than for lack of harm.

/s/ Richard H. Edelman  
Justice

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<sup>1</sup> See TEX. CODE CRIM. PROC. ANN. art. 42.12 § 3(e)(1) (Vernon Supp. 2001) (a defendant who is sentenced to a term of imprisonment exceeding ten years is not eligible for community supervision).

Judgment rendered and Opinion filed May 10, 2001.

Panel consists of Justices Anderson, Fowler, and Edelman. (Edelman, J. concurring and dissenting).

Publish — TEX. R. APP. P. 47.3(b).