

Reversed and Remanded and Opinion filed May 17, 2001.



In The

Fourteenth Court of Appeals

NO. 14-98-00867-CR

ALAN WILLIAM WHITELOW, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 785,647**

OPINION ON REMAND

A jury convicted Alan William Whitelaw of theft over \$200,000 for his part in a complicated check theft and forgery scheme. The trial court sentenced him to 60 years' imprisonment. This court affirmed in an unpublished opinion. *Whitelaw v. State*, no. 14-98-00867-CR, 1999 WL 1123016 (Tex. App.—Houston [14th Dist.] December 12, 1999). The Court of Criminal Appeals found error in the trial court's failure to order a pre-sentence investigation report as requested by appellant. Therefore, the court reversed the judgment of this court and remanded. 29 S.W.3d 129 (Tex. Crim. App. 2000). The case is now before us on remand.

The State urges this court to conduct a harm analysis rather than remand to the trial court for a new sentencing proceeding. We decline to do so. The court of criminal appeals did not remand to us with instructions to perform a harm analysis. *Cf. Johnson v. State*, 982 S.W.2d 403, 406 (Tex. Crim. App. 1998). Furthermore, that court has already considered the State’s argument, that a full punishment hearing rendered preparation of a presentence investigation report superfluous, and rejected it. *See Whitelaw*, 29 S.W.3d at 132. The court held that the plain language of the statute foreclosed any such exception. *Id.* We are not at liberty to disregard the Court of Criminal Appeals’ conclusions on remand. *See, e.g., Johnson v. State*, 996 S.W.2d 288 (Tex. App.—Houston [14th Dist.] 1998, *rev’d on other grounds*, ___ S.W.3d ___, 2001 WL 293204 (Tex. Crim. App. March 28, 2001).

Because the court of criminal appeals found that the trial court erred by not ordering a PSI on request, and the statute requires the PSI to be ordered “before the imposition of sentence by a judge in a felony case,” we reverse the judgment of the trial court as to punishment only and remand for preparation of a presentence investigation report prior to imposition of a new sentence.

/s/ Ross A. Sears
 Justice

Judgment rendered and Opinion filed May 17, 2001.

Panel consists of Justices Sears, Cannon, and Draughn.*

Do Not Publish — TEX.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

* Senior Justices Ross A. Sears, Bill Cannon, and Joe L. Draughn sitting by assignment.