Dismissed and Opinion filed July 20, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00632-CR

BOBBY DEAN COKER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th Judicial District Court
Harris County, Texas
Trial Court Cause No. 699,220

O P I N I O N

Pursuant to a plea bargain agreement with the State, Bobby Dean Coker, appellant, pleaded guilty to the offense of aggravated sexual assault. *See* TEX. PEN. CODE ANN. § 22.021 (Vernon Supp. 2000). In accordance with the agreement, the trial court deferred a finding of guilt and ordered appellant to serve ten years of deferred adjudication probation, pay a fine, and perform community service. After appellant violated certain terms and conditions of his community supervision, the State filed a motion to adjudicate guilt, and the trial court assessed appellant's punishment at ninety-nine years' confinement in the Texas Department of Criminal Justice, Institutional Division.

After appellant was sentenced in open court, he timely filed a general *pro se* notice of appeal and a pauper's oath petitioning the trial court to appoint appellate counsel to represent him. No motion to withdraw from trial counsel appears in the record. Subsequently, the trial court appointed appellate counsel for appellant, and appellant filed a motion for new trial that the trial court deemed untimely. In two points of error, appellant contends that he was denied the right to counsel during a critical stage of the judicial proceedings - the period between sentencing and the filing of a motion for new trial - in violation of state and federal law. On appeal, the State challenges this court's jurisdiction to hear the case based on appellant's failure to file a proper notice of appeal. As we explain below, we agree and dismiss this appeal for want of jurisdiction.

To perfect an appeal in a criminal case, the Texas Rules of Appellate Procedure provide that:

> [I]f the appeal is from a judgment rendered on the defendant's plea of guilty or nolo contendere under Code of Criminal Procedure article 1.15, and the punishment assessed did not exceed the punishment recommended by the prosecutor and agreed to by the defendant, the notice must:
>
> (A) specify that the appeal is for a jurisdictional defect;
>
> (B) specify that the substance of the appeal was raised by written motion and ruled on before trial; or
>
> (C) state that the trial court granted permission to appeal.

TEX. R. APP. P. 25.2 (b)(3). When language does not comply with the requirements of rule 25.2 (b)(3), we have jurisdiction only to consider points of error raising jurisdictional defects or attacking the voluntariness of the initial plea. *See Flowers v. State*, 935 S.W.2d 131, 134 (Tex. Crim. App. 1996) (interpreting former TEX. R. APP. P. 40 (b)(1)); *Vidaurri v. State*, 981 S.W.2d 478, 479 (Tex. App.—Amarillo 1998, pet. granted).

Rule 25.2 (b)(3) governs our case because the trial court rendered judgment on appellant's guilty plea, and assessed punishment that did not exceed the punishment recommended by the prosecutor and agreed to by appellant. Therefore, appellant had to comply with the requirements of the rule to invoke this court's jurisdiction. *See Vidaurri*, 981 S.W.2d at 479; *Payne v. State*, 931 S.W.2d 56, 57 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd) (interpreting former TEX. R. APP. P. 40 (b)(1)).

Appellant filed a general notice of appeal, which states:

> Comes now the defendant Bobby Dean Coker, on this 21st day of May 1999, and within thirty days of sentence having been pronounced in the above numbered and styled cause and, excepting to the ruling of the court, filed this written notice of appeal of said conviction to the Court of Appeals pursuant to Texas Rule of Appellate Procedure 40 (b)(1).

This language does not comply with any of the requirements of rule 25.2 (b)(3) and, therefore, we have jurisdiction only to consider argument raising jurisdictional defects or attacking the voluntariness of the plea. Appellant's two points of error (contending that he was denied the right to counsel during a critical stage of the judicial proceedings) neither attack the voluntariness of his plea, nor raise a jurisdictional defect. Consequently, we have no jurisdiction over the issues raised.[1]

However, any defect or omission in the notice is curable by a timely amendment. *See* TEX. R. APP. P. 25.2 (d) (stating that an appellant may correct a defect or omission in a notice of appeal at any time before his brief is filed, or thereafter by leave of court). Here, the State expressly pointed to the defect in appellant's notice of appeal as a ground for dismissal in its response brief. The State filed its brief nearly five months before the date this case was submitted for review. Since that time, appellant has not attempted to amend his notice of appeal to meet the requirements of rule 25.2 (b)(3), and has failed to cure the defect in his notice.

Accordingly, we order this appeal dismissed for want of jurisdiction.

/s/ Wanda McKee Fowler
Justice

[1] We note that even if we had jurisdiction over this appeal, the record does not affirmatively show that appellant was denied counsel during a critical stage of the judicial proceedings. *See Oldham v. State*, 977 S.W.2d 354, 360 (Tex. Crim. App. 1998); *Cantu v. State*, 988 S.W.2d 481, 483 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd).

Judgment rendered and Opinion filed July 20, 2000.

Panel consists of Justices Yates, Fowler and Edelman.

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