Affirmed and Opinion filed August 31, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00048-CR

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RICHARD ALLEN HALL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 587,417

O P I N I O N

Appellant, Richard Allen Hall, pleaded guilty to the offense of Aggravated Sexual Assault of a Child. The court deferred adjudication of guilt and placed appellant on community supervision for a period of ten years. Subsequently, the trial court granted the State's motion to adjudicate guilt and sentenced appellant to twenty-five years in prison.

In eight points of error, appellant challenges the trial court's actions in the original plea proceeding and in the adjudication hearing. We dismiss those points addressing the original plea proceeding for want of jurisdiction. We do have jurisdiction over, and will address appellant's sole remaining point of error challenging the admission of polygraph evidence in the adjudication hearing. We affirm the judgment of the trial court.

I.
Original Plea Proceeding

In 1992, appellant pleaded guilty to the offense of Sexual Assault of a Child. The trial court deferred adjudication of guilt and placed appellant on community supervision for a period of ten years. As a condition of his community supervision, the trial court required appellant to participate in a Sex Offender Counseling program and to faithfully follow all guidelines and instructions of the counseling program. The trial court also ordered appellant to submit a blood sample for DNA testing. Appellant did not appeal from that deferred adjudication proceeding.

Approximately six years later, the State filed a motion to adjudicate appellant's guilt for his repeated failure to follow the guidelines and instructions of the counseling program and for his failure to submit to DNA testing as directed. At the hearing on the State's motion, the State asked appellant whether he attended all regularly scheduled meetings, a guideline of the counseling program, and appellant admitted that he had failed to attend. Appellant also admitted that he failed to submit to DNA testing as directed. At the conclusion of the hearing, the trial court found that the allegations in the motion to adjudicate were true and proceeded to the punishment phase. At the conclusion of the punishment hearing, the trial court adjudicated appellant guilty and sentenced him to twenty-five years confinement in the Texas Department of Criminal Justice, Institutional Division.

II.
Appellant's Collateral Attack on the Original Plea Proceeding

A. Lack of Findings of Fact and Conclusions of Law

Appellant's original brief, filed July 15, 1999, contains three points of error. Point two contends the trial court erred in failing to make written findings of facts and conclusions of law regarding the voluntariness of appellant's confession. By order issued on July 22, 1999, this court abated the appeal and ordered the trial court to make written findings of fact and

conclusions of law on this issue. On January 13, 2000 the trial court entered findings of fact and conclusions of law pursuant to this court's directive.

Thereafter on March 20, 2000, appellant filed a supplemental brief raising five points of error (a) contending the trial court erred in entering findings of fact and conclusions of law based on a cold record, and (b) asserting error in admitting appellant's written confession and in denying appellant's motion to suppress his confession because it was involuntary. We do not have jurisdiction to address these five points of error.

B. Appellate Jurisdiction

In 1999, the Texas Court of Criminal Appeals interpreted Article 44.01(j) of the Texas Code of Criminal Procedure as extending a rule formerly only applicable to regular community supervision to the deferred adjudication context. *See Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999). The rule for regular community supervision is that a defendant placed under such supervision may raise issues relating to the conviction, such as evidentiary sufficiency, only in appeals taken when community supervision is first imposed. *See id.* at 661. The *Manuel* Court holds this rule also applies to deferred adjudication community supervision. *Id*. Thus, a defendant placed on deferred adjudication community supervision may raise issues related to the original plea proceeding, such as evidentiary sufficiency, only in appeals taken when deferred adjudication is first imposed. *Id*. at 661-662. The *Manuel* Court held it was not the Legislature's intent in enacting Article 44.01(j) to permit two reviews of the legality of the deferred adjudication order: one when deferred adjudication is first imposed, and another when and if it is later revoked. *Id*. at 662. Thus, in *Manuel*, because the defendant pleaded guilty and received deferred adjudication community supervision in 1993, and failed to appeal an alleged error occurring at the time of his guilty plea until after his community supervision was revoked in 1997, his appeal was untimely. *Id*. at 660.

Here, appellant could have directly appealed the 1992 order placing him on deferred adjudication community supervision. Instead, he waited for almost six years, until he was adjudicated, to bring his collateral complaint.

Applying the analysis in *Manuel* to the case *sub judice*, this court lacked jurisdiction to address the issue raised in appellant's original brief regarding the absence of findings and conclusions regarding the voluntariness of his confession at the time he pleaded guilty and received deferred adjudication probation. *A fortiori*, we do not have jurisdiction to address the two issues raised in his supplemental appellate brief regarding alleged errors by the trial court in making findings of fact and conclusions of law based on a cold record. Nor do we have jurisdiction to address, at this late date, appellant's other points of error relating to the original plea proceeding. Therefore, we dismiss for lack of jurisdiction appellant's second point of error in his original brief, and points four, five, six, seven, and eight in the supplemental brief.[1]

In connection with this jurisdictional issue, appellant has included a "point of discussion"(point of error one) in his original brief, which addresses the issue of jurisdiction under the circumstances, as here, where the defendant is sentenced in accordance with a plea agreement and, following his "not true" plea in the revocation proceeding, files a general notice of appeal that does not contain one of the statements required by appellate procedure rule 25.2(b). Because our jurisdiction to address appellant's points of error based on the 1992 deferred adjudication proceeding is resolved by application of *Manuel*, it is unnecessary for us to reach this additional jurisdictional issue. Accordingly we also dismiss appellant's point of error one.

III.
Polygraph Evidence

Appellant's third point of error, the sole point of error which we have jurisdiction to address, concerns the trial court's consideration at the adjudication hearing of polygraph evidence. We hold that appellant waived his objection to this evidence by failing to conform his argument on appeal to his trial objection.

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[1] The points of error in appellant's two briefs each begin with point of error one. Thus, it can be confusing to a reader if we discuss point of error two in the original brief as opposed to point of error two in the supplemental brief. Accordingly, we shall refer to all of appellant's points of error as if they were numbered *seriately* one through eight.

Appellant's complaint on appeal must comport with his objection at trial or it is waived. *See Rezak v. State*, 783 S.W.2d 869, 870 (Tex. Crim. App. 1990). As the Court of Criminal Appeals there stated:

> In order for an issue to be preserved on appeal, there must be a timely objection which specifically states the legal basis for the objection. An objection stating one legal basis may not be used to support a different legal theory on appeal.(citations omitted).

Id.

At the adjudication hearing, appellant objected to the admission of the polygraph evidence on the basis of hearsay, incompetence of the witness, and testifying to facts not in evidence. Specifically, the dialogue was as follows:

> Q: [by the Prosecutor] Ms. Trivedi, would it also be a requirement of the guidelines that he submit to a polygraph?
>
> A: Yes, he was.
>
> Q: Do you have any results of that?
>
> [Defense Counsel]: Object to hearsay.
>
> THE COURT: Overruled.
>
> A: Yes, I do have some polygraph results in my possession.
>
> Q: [by the Prosecutor] Can you tell the Court whether or not Mr. Hall was deemed to be deceptive or truth telling?
>
> [Defense Counsel]: Objection. This witness is incompetent to testify as to the accuracy of the test, whether the examiner was probably qualified, all the predicates that have to be testified to by the witness before the evidence is admissible in court.
>
> THE COURT: Overruled.
>
> Q: [by the Prosecutor] Ms. Trivedi, let me ask you, do you have a copy of that polygraph report in the file that is maintained by Harris County Adult Probation?
>
> A: Yes, I have a hard copy.
>
> Q: And was Mr. [H]all deemed to be deceptive?
>
> [Defense Counsel]: Objection to testifying to facts not in evidence.
>
> THE COURT: Overruled.

In his brief, however, appellant argues instead that his essential contention on appeal under this third point of error is that"allowing probation treatment centers to even allow the use of polygraphs [sic] results of which are per se inadmissible as a matter of Texas law, in conjunction with the trial court's action in even allowing and considering any polygraph evidence during the adjudication hearing, constituted a violation of the Appellant's right to due process and was grossly and flagrantly fundamentally unfair under Tex. Consti., Art. 1, Sec. 19." (emphasis omitted).

Since appellant's objection to the polygraph evidence on appeal is not the same as his objection at the adjudication hearing, nothing is presented for appellate review. Therefore, we overrule appellant's third point of error.

Accordingly, we affirm the judgment of the trial court.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed August 31, 2000.

Panel consists of Justices Amidei, Anderson, and Frost.

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