

Affirmed and Opinion filed August 31, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00885-CR

FILIBERTO MORENO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 768,593**

OPINION

This is an appeal from a conviction for aggravated assault in which the trial court previously deferred final adjudication of guilt and placed appellant on probation for a period of six years. Upon motion by the State to revoke appellant's probation, the trial court determined that it would proceed to an adjudication of guilt on the original charge and thereupon assessed appellant's punishment at five years confinement.

On December 9, 1997, appellant entered a plea of guilty to the charge of aggravated assault. On June 14, 1999, the State filed a "Motion to Adjudicate Guilt" alleging that

appellant violated several conditions of his probation. The motion charged, among other things, that appellant committed an offense against the state of Texas on or about May 31, 1999 by driving while intoxicated. On June 16, 1999, appellant signed a stipulation of evidence whereby he admitted violating his probation. The trial court determined that appellant had violated the terms of his probation and then proceeded to a finding of appellant's guilt in the original aggravated assault cause. The court thereafter assessed appellant's punishment at five years confinement.

By his sole ground of error, appellant now contends that "Prosecutor's actions are a violation of appellant's due process. Prosecutor sought to punish appellant based on appellant's desire to pursue a course of action in which the law plainly allows him to do." Appellant essentially claims that he was forced to stipulate to the truth of the allegations in the State's motion to adjudicate guilt in order to avoid having a hearing on the motion before his hearing on the underlying DWI offense.

Article 42.12, §5(b) provides in pertinent part:

On violation of a condition of community supervision imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 21 of this article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination.

While appellants situated similarly to appellant herein, are free to avail themselves of the appellate process "(a)fter an adjudication of guilt . . . as if the adjudication of guilt had not been deferred," the statute clearly provides that the trial court's decision to proceed with an adjudication of guilt is one of absolute discretion and not reviewable by this court. *Williams v. State*, 592 S.W.2d 931, 932 (Tex. Crim. App. 1979); *See also Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999). Similarly, appellant cannot attack the voluntariness of his plea to a State's motion to adjudicate his guilt. *See Gareau v. State*, 923 S.W.2d 252,

253 (Tex. App.—Fort Worth 1996, no pet.). Given the plain meaning of Article 42.12, § 5(b), an appellant whose deferred adjudication probation has been revoked and who has been adjudicated guilty of the original charge, may not raise on appeal contentions of error in the adjudication of guilt process. *See Connolly*, 983 S.W.2d at 741; G. Dix & R. Dawson, *Texas Criminal Practice and Procedure* § 43.117 (1995). Accordingly, appellant’s ground of error presents nothing for review.

We have examined the record before us and, finding no reversible error, affirm the judgment of the trial court.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed August 31, 2000.

Panel consists of Justices Amidei, Anderson, and Frost.

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