Affirmed and Opinion filed September 14, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00948-CR

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JEREMIAH JAMES BOLLINGER, Appellant

V.

THE STATE OF TEXAS , Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 756,014

O P I N I O N

Appellant pled guilty to aggravated robbery without benefit of a plea bargain. The trial court postponed accepting the plea pending a pre-sentence investigation. At the second hearing on the matter the trial court heard evidence, reviewed the PSI, and took the matter under advisement. At the third hearing the trial court accepted the plea and sentenced appellant to six years' confinement. In three points of error appellant contests the sufficiency of the evidence to support his conviction, complains that the trial court erred by permitting unsworn testimony and argues the PSI is so flawed as to deny him due process. We affirm.

In his first point of error appellant contends the evidence is insufficient to support his conviction because his testimony at the PSI hearing contradicted the elements of the offense. The substance of appellant's testimony at the hearing was that he did not have a weapon when the robbery was carried out, and that he did not know his accomplice was going to rob the victim until it was too late to stop him. Appellant acknowledged he was the driver of the vehicle used in the robbery and that his participation in the robbery was a "mistake."

The record contains judicial confessions signed by appellant which the trial court deemed sufficient to support his plea of guilty. It is well-settled that a judicial confession alone is sufficient to support a plea of guilty if that judicial confession adequately establishes all the elements of the offense. *Dinnery v. State*, 592 S.W.2d 343, 355 (Tex. Crim. App. 1979)(en banc). Because appellant never sought to withdraw his plea, when contradictory evidence is raised in a plea proceeding the trial court sits as trier of the facts and of the credibility of the witnesses. *See Moon v. State*, 572 S.W.2d 681, 682 (Tex. Crim. App. 1978). When a jury is not involved, the trial court is not bound to withdraw a plea of guilty *sua sponte* when conflicting evidence is presented at a plea hearing, and whether the judge should have done so is judged under an abuse of discretion standard. *See id.*

When the accused pleads guilty, "the trial court must look to the totality of the circumstances to determine whether there is sufficient evidence to require a withdrawal of the plea." *Valle v. State,* 963 S.W.2d 904, 909 (Tex. App.—Texarkana 1998, pet. ref'd) (citing *Gates v. State*, 543 S.W.2d 360, 361-62 (Tex. Crim. App.1976) and *Hernandez v. State*, 827 S.W.2d 54, 56 (Tex.App.—Houston [1st Dist.] 1992, no pet.)). Although the trial court is not obligated to withdraw the plea in a bench trial, it is required to take into account the evidence that raised the issue of innocence in determining whether there was sufficient evidence to substantiate the plea. *See id*. at 908-09 (citing *Moon*, 572 S.W.2d at 682). In *Valle*, the appellant did not argue that the trial court failed to weigh the evidence appropriately, and the Texarkana Court of Appeals presumed the trial court found sufficient evidence to support the plea. *Id*. Here, appellant does not argue that the trial court failed to weigh the evidence

appropriately. Because appellant's complaint involves the sufficiency of the evidence to support the plea, we will consider whether the evidence is sufficient to support the plea.

On a plea of guilty, a conviction may be supported by stipulated evidence where the defendant consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses. *See* TEX. CODE CRIM. PROC. ANN. art. 1.15 (Vernon Supp. 2000). A stipulation about the testimony the witnesses would have given had they been present at trial is sufficient to support a conviction in the context of article 1.15 of the Texas Code of Criminal Procedure. *See Stone v. State*, 919 S.W.2d 424, 426 (Tex. Crim. App. 1996).

In *Scott v. State*, 945 S.W.2d 347 (Tex. App.—Houston [1st Dist.] 1997, no pet.), the First Court of Appeals encountered a situation very similar to the one presented here. Appellant in that case challenged the sufficiency of the evidence to support his plea under article 1.15. The only evidence introduced to support appellant's plea of *nolo contendere* was a statement signed by appellant that "the elements of the offense alleged therein constitute the evidence in this case." The court found this was "the functional equivalent of a stipulation embracing every element of the offense charged" and that this stipulation was sufficient to satisfy the requirements of article 1.15. *Id.* at 348.

In the signed papers filed in our case appellant stipulated that he had "read the indictment and . . . committed each and every element alleged." This stipulation is sufficient to satisfy the requirements of article 1.15, and we find the trial court did not abuse its discretion in declining to withdraw appellant's guilty plea based on appellant's testimony at the PSI hearing. Appellant's first point of error is overruled.

In his second point of error appellant argues the trial court erroneously permitted the state's attorney to give unsworn testimony at the PSI hearing. Appellant failed to object to this "testimony," therefore nothing is presented for review. *See* TEX. R. APP. P. 33.1.

In his third point of error appellant contends he was denied due process because the pre-sentence investigation report contained major errors. Appellant's counsel was given the opportunity to correct these errors, and in fact did correct some errors. Any other problems

were not objected to, and therefore nothing is presented for our review. *See id.* Appellant's third point of error is overruled, and the judgment of the trial court is affirmed.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed September 14, 2000.

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

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* Senior Justices Bill Cannon, Joe L. Draughn, and Norman Lee sitting by assignment.