Affirmed and Opinion filed October 14, 1999.

In The

Fourteenth Court of Appeals

NO. 14-97-01049-CR

TYSON MONROW MASON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 711285

O P I N I O N

Appellant was charged by indictment with the offense of failure to stop and render assistance. Upon the State's recommendation, the trial judge accepted appellant's plea of guilty, found the evidence sufficient to substantiate guilt, but withheld an adjudication of guilt and placed appellant on community supervision for a period of three years, assigned 90 hours of community service, and ordered restitution in the amount of $1,200. The State later filed a motion to adjudicate guilt. That motion alleged appellant committed another substantive criminal offense, namely injury to a child, and that he violated several terms and conditions of his probation.

The subsequent criminal offense was tried before another judge. The jury in that case convicted appellant of injury to a child. Following that conviction, the judge who originally placed appellant on community supervision, conducted a punishment hearing on both the subsequent offense and the motion to adjudicate guilt. At the conclusion of that hearing, the trial judge entered an order adjudicating appellant's guilt, revoked the community supervision, and assessed punishment at five years confinement in the Texas Department of Criminal Justice—Institutional Division.

In a single point of error, appellant contends the trial court was without authority to proceed in the absence of a valid plea by appellant to the motion to adjudicate. We will begin with a brief recitation of the facts. Immediately prior to the combined punishment hearing on the State's motion to adjudicate guilt and the subsequent offense of injury to a child, the trial judge swore in the witnesses. The State proceeded with its first witness. During that testimony, the following exchange occurred:

> THE COURT: Interrupt for just a minute. Just so the record is clear, you have the records, [defense counsel] told me your client pleads true to the technical allegations in the Motion to Adjudicate?
>
> DEFENSE COUNSEL: That's right.
>
> * * *
>
> THE COURT: And he doesn't want to be arraigned on the Motion to Adjudicate, or does he want to be arraigned?
>
> DEFENSE COUNSEL: Whatever the Court's preference on that.
>
> THE COURT: It's your client's choice. I don't care.
>
> DEFENSE COUNSEL: We would waive it, Judge.
>
> THE COURT: Okay. ...[1]

[1] The docket sheet reflects: "Defendant waived reading of Motion to Adjudicate Guilt and enters a plea of "True."

Appellant contends that by not personally entering a plea to the allegations in the motion to adjudicate guilt, the trial court was without authority to proceed. We disagree for the following reasons.

First, from the colloquy above, it is readily apparent that the trial court was prepared to arraign appellant on the motion to adjudicate guilt and to hear his plea to the allegations therein. However, defense counsel waived arraignment. This waiver is consistent with the trial court's remarks that defense counsel had indicated prior to the hearing that appellant would plead true to the "technical allegations."

Second, there is no requirement that a defendant on community supervision enter a plea to the allegations in the motion. *See Detrich v. State*, 545 S.W.2d 835, 837 (Tex. Crim. App. 1977) (due process does not require that a plea be entered at a hearing to revoke probation); *Anthony v. State*, 962 S.W.2d 242, 246 (Tex. App.—Fort Worth 1998, no pet.). Therefore, the fact that appellant failed to enter a plea did not deprive the trial court of jurisdiction.

Third, a party may appeal only that which the Legislature has authorized. *See Galitz v. State*, 617 S.W.2d 949, 951 (Tex. Crim. App.1981); and *Phynes v. State*, 828 S.W.2d 1, 2 (Tex. Crim. App. 1992). In the context of deferred adjudication probation, the Legislature has specifically prohibited an appeal from a determination to proceed with an adjudication of guilt on the original charge. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (Vernon Supp.1999) (No appeal may be taken from the determination by the trial court of whether it proceeds with an adjudication of guilt on the original charge); *Connolly v. State*, 983 S.W.2d 738, 740 (Tex. Crim. App. 1999); and *Sanders v. State*, 944 S.W.2d 448, 450 (Tex. App.—Houston [14th Dist.] 1997, no pet.) (noting prohibition against direct appeal of determination to adjudicate is total). The Court of Criminal Appeals has noted "from the beginning of deferred adjudication practice that the Legislature meant what it said in Article 42.12, Sec. 5(b)." *Olowosuko v. State*, 826 S.W.2d 940, 942 (Tex. Crim. App. 1992).

This prohibition applies regardless of the alleged error. In *Phynes v. State*, 828 S.W.2d at 2, the court refused to consider the defendant's arguments concerning a violation of his right to counsel. As stated by the court: "It naturally follows that when a legislative enactment says an accused may not appeal a determination to adjudicate, there is no right to do so. Therefore, even if appellant's right to counsel was violated, he may not use direct appeal as the vehicle which to seek redress." *Id.* Similarly, the Fort Worth

Court of Appeals declined to review the trial court's decision to adjudicate guilt when the defendant contended the plea of true was involuntary. *See Gareau v. State*, 923 S.W.2d 252, 253 (Tex. App.—Fort Worth 1996, no pet.).

Because of this legislative prohibition on the right to entertain an appeal from the trial court's decision to adjudicate guilt, dismissal is the appropriate disposition.

For these reasons, this appeal is dismissed for want of jurisdiction.

/s/ Charles F. Baird
Justice

Judgment rendered and Opinion filed October 14, 1999.

Panel consists of Justices Yates, Amidei and Baird.[2]

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

[2] Former Judge Charles F. Baird sitting by assignment.