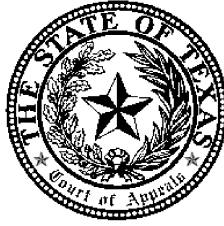


Dismissed in Part, Reversed and Remanded in Part, and Opinion filed October 18, 2001.



In The
Fourteenth Court of Appeals

NO. 14-00-00646-CR
NO. 14-00-00647-CR
NO. 14-00-00648-CR

NICOLAS ORTIZ, JR. , Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause Nos. 806,009; 839,203; 839,204

MEMORANDUM OPINION

By negotiated plea, appellant Nicolas Ortiz, Jr. pleaded guilty to three counts of misapplication of construction trust funds. The trial court deferred adjudication of guilt and imposed deferred adjudication probation for three years. Appellant pleaded true to a motion to adjudicate guilt, and the trial court assessed punishment at five years confinement for each offense to run concurrently. Appellant complains that his plea was involuntary, and thus, entered in violation of both the United States and Texas Constitutions. We dismiss in part and reverse and remand in part.

Factual and Procedural Background

Appellant pleaded guilty to three counts of theft, one of which was reduced to a state jail felony. TEX. PEN. CODE ANN. § 31.03(e)(4) (Vernon Supp. 1995). The trial court imposed punishment at five years confinement in the Texas Department of Criminal Justice, Institutional Division for each offense. Under the Texas Penal Code, however, punishment for a state jail felony is not to exceed two years. TEX. PEN. CODE ANN. § 12.35(a) (Vernon 1994). Appellant complains that each plea, entered in a consolidated hearing, resulted in an illegal sentence. We have jurisdiction to hear appellant's complaint that the trial court erred in imposing a greater sentence than allowed by law. *Ex parte Beck*, 922 S.W.2d 181, 182 (Tex. Crim. App. 1996); *Fullbright v. State*, 818 S.W.2d 808, 809 (Tex. Crim. App. 1991).

Legal Background

A punishment unauthorized by law is a void sentence. *Heath v. State*, 817 S.W.2d 335, 336 (Tex. Crim. App. 1991), *abrogated on other grounds*, *Ex parte Williams*, 2001 WL 356290 (Tex. Crim. App. 2001) (distinguishing between an unauthorized probation order and an illegal sentence and disavowing *Heath's* conclusion that an unlawful grant of probation constitutes an illegal or void sentence); *Ex parte Simms*, 868 S.W.2d 803, 804 (Tex. Crim. App. 1993) (finding entry of consecutive sentences void where unauthorized by statute); *Ex parte Johnson*, 697 S.W.2d 605, 606-607 (Tex. Crim. App. 1985) (holding \$10,000.00 fine unauthorized by law); *Ex parte McIver*, 586 S.W.2d 851, 853 (Tex. Crim. App. 1979). A defect which renders a sentence void may be raised at any time. *Heath*, 817 S.W.2d at 336; *State v. Rowan*, 927 S.W.2d 116, 117-18 (Tex. App.—Houston [1st Dist.] 1996, no pet.). Moreover, if any portion of a punishment is not authorized by law, only that portion of the sentence is void. *Heath*, 817 S.W.2d at 336.

Discussion

Because the punishment in cause number 806,009 exceeds that which is allowed by law, we hold that the sentence imposed by the trial court in that cause is void. As such, we reverse the part of the judgment assessing punishment in cause number 806,009 and remand

for a new punishment hearing. *Jackson v. State*, 990 S.W.2d 879, 881-82 (Tex. App.—Beaumont 1999, no pet.). Because only that portion of appellant’s sentence is erroneous, appellant’s argument that the sentences in the other two causes are void is without merit. *Heath*, 817 S.W.2d at 336.

Furthermore, we have no jurisdiction to consider the involuntariness of appellant’s plea in the remaining causes because appellant failed to comply with Texas Rule of Appellate Procedure 25.2(b)(3).¹ Because appellant filed a general notice of appeal after his negotiated plea, we have no jurisdiction to hear causes 839,203 and 839,204. *Cooper v. State*, 45 S.W.3d 77 (Tex. Crim. App. 2001) (holding that an appellant who files a general notice of appeal may not appeal the voluntariness of a negotiated plea).

In his third issue on appeal, appellant argues that the trial court abused its discretion by denying his motion for a new trial. Appellant filed a handwritten motion complaining that the verdict was contrary to the law and the evidence. However, appellant sends no record to this Court that would enable us to review this complaint. And, as previously stated, the remedy for the imposition of a void sentence is remand for a new punishment hearing. *Jackson*, 990 S.W.2d at 882. We overrule this complaint.

Conclusion

In summary, we remand cause number 806,009 for a new punishment hearing only; we affirm the remainder of the judgment in cause number 806,009; and we dismiss appellant’s appeal in cause numbers 839,203 and 839,204 for want of jurisdiction.

/s/ Wanda McKee Fowler
Justice

¹ That rule provides that when an appeal is from a judgment rendered on a defendant’s plea of guilty or nolo contendere and the punishment assessed does not exceed the punishment recommended by the State and agreed to by the defendant, the notice of appeal must do one of the following: (1) specify that the appeal is for a jurisdictional defect; (2) specify that the substance of the appeal was raised by written motion and ruled on before trial; or (3) state that the trial court granted permission to appeal. TEX. R. APP. P. 25.2(b)(3).

Judgment rendered and Opinion filed October 18, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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