

Affirmed and Opinion filed November 10, 1999.



In The
Fourteenth Court of Appeals

NO. 14-98-01130-CR

DON EDWARD NELSON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 338TH District Court
Harris County, Texas
Trial Court Cause No. 775,280**

OPINION

Appellant Don Edward Nelson (Nelson) appeals his guilty plea to criminal mischief was involuntary because he was not properly admonished by the trial court about the consequences of his plea. We affirm because Nelson failed to preserve error for appeal by waiving the court reporter's transcription of the hearing where he made his guilty plea.

ADMONITIONS

Nelson pleaded guilty to criminal mischief for intentionally and knowingly striking another person's vehicle with his own. He appeals that his plea was involuntary because

the trial court did not properly admonish him about the range of punishment for his offense. Before a trial court can accept a felony defendant's plea of guilty or nolo contendere, the trial court must admonish the defendant about the consequences of his or her plea, including the range of punishment for the offense. TEX. CODE CRIM. PROC. ANN. art. 26.13(a) (Vernon 1989). Such admonitions help to ensure that the defendant's plea is free and voluntary. *See Ex parte Gibauitch*, 688 S.W.2d 868, 871 (Tex. Crim. App. 1985).

The trial court may admonish a defendant either orally or in writing. TEX. CODE CRIM. PROC. ANN. art. 26.13(d). In this case, Nelson claims that the trial court wholly failed to admonish him about the range of punishment for criminal mischief, as required by article 26.13(a)(1). There is, however, no court reporter's record of the hearing to determine whether the trial court admonished Nelson orally. A court reporter must attend all court sessions and make a record of the proceedings, unless the parties agree to excuse the reporter. TEX. R. APP. P. 13.1(a). And in this case, the record reveals that Nelson specifically waived his right to have the court reporter record the hearing. After causing the reporter's absence, Nelson cannot then appeal that the lack of a reporter's record shows the trial court wholly failed to admonish him. By waiving the reporter's record, Nelson has failed to preserve error for appeal. *See Montoya v. State*, 872 S.W.2d 24, 25 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd). Accordingly, we overrule his sole point of error and affirm the trial court's judgment.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed November 10, 1999.

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

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

* Senior Justices Ross A. Sears, Bill Cannon, and Norman Lee sitting by assignment.

