Affirmed and Opinion filed December 2, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-01423-CR

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FERNANDO ISRAEL ARCHUNDIA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court At Law No. 12
Harris County, Texas
Trial Court Cause No. 96-25429

O P I N I O N

Appellant pled no contest to a charge of misdemeanor assault and entered into a plea bargain under which the court deferred a finding of guilt and placed appellant on community supervision for one year. After appellant violated the terms of his supervision, the court extended his community supervision six months. Upon yet another violation, appellant was adjudicated guilty and sentenced to one year in the Harris County jail. Appellant raises three points of error on appeal.

Appellant first claims that his guilty plea was not knowingly and voluntarily entered because he was not admonished that his community supervision could be extended. Appellant also claims that his one-year

jail sentence was cruel and unusual in violation of the U. S. and Texas constitutions.

The rule that a guilty plea must be voluntary is not without limits, especially as it concerns the consequences of the plea. *See Ex parte Evans*, 690 S.W.2d 274, 277 (Tex. Crim. App. 1985). This rule does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor before making his decision to enter a guilty plea. *Id*. If a defendant is fully advised of the direct consequences of his plea, his ignorance of a collateral consequence does not render the plea involuntary. *Ex parte Morrow*, 952 S.W.2d 530, 536 (Tex. Crim. App.1997) (citing *United States v. Long*, 852 F.2d 975, 979-80 (7th Cir.1988)).

Appellant was admonished that his probation could be extended on at least two different occasions. On one occasion, Appellant signed a form advising him of the conditions of his probation. Above his signature, this form advises appellant that the court can alter, modify, or terminate his probation. On another occasion, Appellant signed a deferred adjudication admonishment which states that the court "may continue, extend, modify, or revoke the probation" if appellant violates a condition of his probation. Appellant's signature on this form is above a paragraph stating that he has read the form and understands the possible consequences of his community supervision. Though these forms do not specifically state "Appellant's community supervision may be extended for six months," we find these admonishments sufficient notice to appellant that his community supervision could be extended by the court.

When the record shows that the defendant received an admonishment on punishment, there is a prima facie showing that the plea was knowing and voluntary. *Ex parte Williams*, 704 S.W.2d 773, 775 (Tex. Crim. App. 1986). The burden then shifts to the defendant to show that he entered his plea without understanding the consequences. *Fuentes v. State*, 688 S.W.2d 542, 544 (Tex. Crim. App.1985). Once an accused attests that he understands the nature of his plea and that it was voluntary, he has a heavy burden to prove on appeal that his plea was involuntary. *Crawford v. State*, 890 S.W.2d 941, 944 (Tex. App.–San Antonio 1994, no pet.).

Appellant has failed to present any evidence to overcome the presumption raised by the trial court's admonishment that his plea was knowingly and voluntarily entered, nor has he shown that he was harmed

by any shortcoming in these admonishments. Accordingly, we overrule appellant's first point of error.

In his second and third points of error, appellant claims that his one-year jail sentence was cruel and unusual punishment in violation of the Texas and United States constitutions. Though appellant acknowledges that his punishment does not fall outside the range of punishments for the convicted offense, he argues that the punishment is cruel and unusual under the particular circumstances of his case.

Texas courts have repeatedly held that punishments that fall within the statutory limits for an offense are not cruel and unusual. *See Harris v. State*, 656 S.W.2d 481, 486 (Tex. Crim. App.1983); *Jordan v. State*, 495 S.W.2d 949, 952 (Tex. Crim. App.1973); *Simmons v. State*, 944 S.W.2d 11, 14 (Tex. App.–Tyler 1996, no pet.). Here, appellant committed a Class A misdemeanor assault, punishable by up to one year in jail and a fine not to exceed $4,000.00. TEX. PEN. CODE § 12.21. He was sentenced to one year in jail based on the fact that appellant committed the assault–a sentence clearly within the statutory limits. Since the punishment did not violate the Texas Constitution, we overrule appellant's third point of error.

Even though the punishment assessed falls within the statutory range of punishment, however, it can still be cruel and unusual in violation of the U. S. Constitution. *Solem v. Helm*, 463 U.S. 277, 282-90, 103 S.Ct. 3001, 3005-09, 77 L.Ed.2d 637 (1983). The punishment must be proportionate to the crime. *Id*. at 289-90, 103 S.Ct. at 3009. In *Solem*, the Supreme Court set out three factors the reviewing court should consider when determining whether the sentence is cruel and unusual: (1) the gravity of the offense and the harshness of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the punishment for the same crime in other jurisdictions. 463 U.S. at 292, 103 S.Ct. at 3011. This test has been modified by Texas courts and the Fifth Circuit in light of the Supreme Court's decision in *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991). *See e.g McGruder v. Puckett*, 954 F.2d 313, 316 (5th Cir.1992) (modifying the *Solem* test to require a threshold determination of gross disproportionality between sentence and crime); *Jackson v. State*, 989 S.W.2d 842, 845-46 (Tex. App.–Texarkana 1999, no. pet. h.) (applying the *McGruder* analysis). Because of the substantial deference reviewing courts accord the legislatures and trial courts, appellate

review rarely requires extended analysis to determine the constitutionality of the sentence. *Solem*, 463 U.S. at 289-90 & n. 16, 103 S.Ct. at 3009-10 & n. 16.

Here, we cannot conclude that appellant's sentence was cruel and unusual under this test. We do not find appellant's sentence of one year in jail for assaulting another to be grossly disproportionate to the offense committed. Though appellant complains that the record does not reflect that the trial court considered the underlying facts of his offense at the revocation hearing, it is apparent from the record that the trial court found that appellant hit another with his hand. This fact is sufficient to substantiate the trial court's ruling. Since we do not find the threshold test to be met, we need not apply the *Solem* test. Even if we were to find the offense to be grossly disproportionate, however, we cannot apply this test since appellant has provided no evidence to substantiate its second and third elements. *See Jackson*, 989 S.W.2d at 846 (Tex. App.–Texarkana 1999, no. pet. h.); *Sullivan v. State*, 975 S.W.2d 755, 757-58 (Tex. App.–Corpus Christi 1998, no pet.); *Simmons v. State*, 944 S.W.2d 11, 15 (Tex. App.–Tyler 1996, no pet.). Thus, we overrule appellant's second point of error.

Because we overrule all of appellant's points of error, we affirm the judgment of the trial court.

/s/ Paul C. Murphy
Chief Justice

Judgment rendered and Opinion filed December 2, 1999.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

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