Affirmed and Opinion filed December 2, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-01433-CR

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JOSEPH WILLIAM KELLERMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 746, 810

O P I N I O N

Joseph William Kellerman, appellant, pled guilty to murder and was sentenced to fifty years in the Texas Department of Criminal Justice, Institutional Division. Appellant argues in one point of error that his plea was involuntary. We affirm.

Appellant concedes he initialed all of the trial court's admonishments, but argues his plea was involuntary because he did not understand that a plea of guilty to murder would prohibit him from receiving probation. *See* TEX. CODE CRIM. PROC. ANN. Art. 42.12 (3)(g)(1)(a) (Vernon Supp. 1999) (A person charged with murder under Section 19.02, *Texas Penal Code* is ineligible for community supervision). Appellant argues his misunderstanding is evidenced by his motion for probation, citing *Harrison v. State*,

688 S.W.2d 497 (Tex. Crim. App. 1985), and he should be granted a new trial. We disagree.

A plea is not rendered involuntary simply because a person requests, but does not receive probation. *See Marez v. State*, 980 S.W.2d 670, 671 (Tex. App.–San Antonio 1998, no pet.); *see also West v. State*, 702 S.W.2d 629, 633 (Tex. Crim. App. 1986). Appellant cannot argue his plea was involuntary solely because he received jail time instead of probation. *See Hinkle v. State*, 934 S.W.2d 146, 149 (Tex. App.–San Antonio 1996, pet. ref'd); *see also Crawford v. State*, 890 S.W.2d 941, 945 (Tex. App.–San Antonio 1994, no pet.) (Even if counsel told his client that he believed he would be given probation, such advice would not render the plea involuntary).

Even so, appellant failed to properly bring forward a sufficient record of his plea hearing when he waived his right to have a court reporter record the plea hearing. Without the reporter's record, the only evidence before this court consists of the clerk's record, which contains the plea and admonishments initialed by appellant and his motion for probation.[1] The record reflects appellant was correctly admonished as to the range of punishment and he initialed each admonishment. When a defendant waives the presence of the court reporter at a plea hearing, the burden is nonetheless on him to ensure that a sufficient record is presented on appeal to show error. *See Montoya v. State*, 872 S.W.2d 24, 25 (Tex. App.–Houston [1st Dist.] 1993, pet. ref'd). Without the reporter's record from the plea hearing we have nothing to show what discussions occurred regarding probation, among other matters. There is a presumption of truthfulness and regularity in the proceedings. *See Breazeale v. State*, 683 S.W.2d 446, 450 (Tex. Crim. App.1984) (op. on reh'g). The clerk's record also reveals appellant was properly admonished regarding deferred adjudication. Thus, because appellant waived a court reporter, he failed to create a sufficient record for this court to review his involuntary plea claim.

Accordingly, we overrule appellant's only point of error and affirm the judgment of the trial court.

Joe L. Draughn

[1] The clerk's record also reveals appellant was properly admonished regarding the possibility of deferred adjudication.

Justice

Judgment rendered and Opinion filed December 2, 1999.

Panel consists of Justices Sears, Cannon, and Draughn.[**]

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

[**] Senior Justices Ross Sears, Bill Cannon and Joe Draughn sitting by assignment.