

Rehearing Overruled; Opinion of October 14, 1999, withdrawn; Affirmed and Substitute Opinion filed December 23, 1999.



In The
Fourteenth Court of Appeals

NO. 14-97-00512-CR

RONALD GLENN SMITH, Appellant

V.

THE STATE OF TEXAS , Appellee

**On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 94-27966**

SUBSTITUTE O P I N I O N

Our original opinion of October 14, 1999 is withdrawn, we deny appellant's motion for rehearing, and we substitute this opinion. We affirm appellant's conviction because the trial court did not err in denying his motion for new trial hearing.

Facts

On December 6, 1994, appellant was charged with possession of a controlled substance (cocaine) weighing more than 4 grams and less than 200 grams. On October 6, 1995, appellant pleaded guilty without an agreed punishment recommendation and true to two enhancement paragraphs. Also on October 6, 1995, the trial court deferred a finding of guilt and sentenced appellant to five years community supervision. *See* TEX. CODE CRIM. PROC. ANN. Art. 42.12, § 5a (Vernon Supp. 1999).

On January 23, 1996, the State filed a motion to adjudicate guilt, alleging appellant violated the terms of his community supervision. On March 25, 1997, the trial court conducted a hearing on the State's motion and found appellant did not comply with the conditions of his community supervision. Appellant was found guilty and sentenced to 25 years in the Texas Department of Criminal Justice, Institutional Division. On April 18, 1997, appellant filed a motion for new trial. The trial court granted his request for a hearing, but instead of going to the courthouse on the day of the hearing, he was taken to Texas Department of Corrections, Institutional Division. The motion for new trial was overruled by operation of law. Appellant filed a written notice of appeal claiming his October 6, 1995 plea was involuntary.

Denial of Evidentiary Motion for New Trial

Appellant brings one point of error arguing he is entitled to a new trial because the trial court erred by not conducting an evidentiary hearing on his motion for new trial. Appellant argues the absence of an evidentiary motion for new trial does not permit him to determine if his October 6, 1995 plea was involuntary.

A defendant placed on deferred adjudication probation may raise issues relating to the original plea proceedings *only* in appeals taken when deferred adjudication probation is first imposed. *See Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999); *Clark v. State*, 997 S.W.2d 365, 368 (Tex. App.—Dallas 1999, no pet.) (op. on reh'g). Here appellant could have appealed from the order placing him on deferred adjudication probation, but he

failed to do so. Therefore, even if we granted appellant's request for a evidentiary new trial hearing, the trial court does not have jurisdiction to address any issue arising from the original plea proceeding. *See Manuel*, 994 S.W.2d at 662; *Reyes v. State*, 849 S.W.2d 812,815-16 (Tex. Crim. App. 1993) (It is not error for a trial court to fail to conduct a motion for new trial hearing when the matters raised by the motion may be determined from the record.). Accordingly, because the trial court did not err in not holding a motion for new trial hearing, we affirm appellant's conviction.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed December 23, 1999.

Panel consists of Justices Draughn, Lee, and Hutson-Dunn.*

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

* Senior Justices Joe L. Draughn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment.