Affirmed and Opinion filed December 30, 1999.

In The

Fourteenth Court of Appeals

———————————

NO. 14-96-01571-CR

———————————

DAVID MILLER TOWNSEND, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 3
Harris County, Texas
Trial Court Cause No. 95-19561

O P I N I O N

David Miller Townsend, Jr. appeals his conviction for the misdemeanor offense of harassment. Appellant brings two points of error. We affirm.

Background

No statement of facts has been filed in this case. The complaint indicates the complainant, Cameron Vann, reported that appellant initiated a pattern of calling Vann's law office on or about March 7, 1994, and continued calling through May 8, 1995. Vann complained that she and her staff repeatedly

asked appellant not to call the office, but appellant continued to do so. Vann complained that she and her staff were annoyed and intimidated by the frequency and content of the calls. The Houston Police Department sent a letter to appellant, asking him to stop calling Vann's office. Appellant admitted receipt of this letter.

A trace was placed on Vann's telephone. The trace reports revealed eight calls placed from appellant's office to Vann's office on March 15, 1994 and March 16, 1994. Vann identified the voice as appellant's.

Appellant was charged with the offense of harassment. Appellant pled not guilty and received a jury trial. The jury found appellant guilty as charged. The trial court assessed punishment at confinement for thirty days in the Harris County Jail.

Constitutionality of Statute

In his first point of error, appellant contends the statute under which he was convicted is unconstitutional because it is vague and overbroad, violates current U.S. treaty obligations, and violates *jus cogens* international law per the International Covenant on Civil and Political Rights.

Criminal laws must be sufficiently clear in at least three respects: (1) a person of ordinary intelligence must be given a reasonable opportunity to know what is prohibited; (2) the law must establish determinate guidelines for law enforcement; and (3) where First Amendment freedoms are implicated, the law must be sufficiently definite to prevent chilling of protected speech. *Long v. State*, 931 S.W.2d 285, 287 (Tex. Crim. App. 1995). If a statute concerns First Amendment rights, there must be greater degree of specificity than in other contexts *Id.* at 287-88 (citing *Kramer v. Price*, 712 F.2d 174 (5th Cir. 1983, *rehearing en banc granted*, 716 F.2d 284 (5th Cir. 1983), *grant of relief aff'd*, 723 F.2d 1164 (5th Cir. 1984). A statute is overbroad if, "in addition to proscribing activities which may constitutionally be forbidden, it sweeps within its coverage speech or conduct which is protected by the First Amendment." *Bynum v. State*, 767 S.W.2d 769, 772 (Tex. Crim. App. 1989) (quoting *Clark v. State*, 665 S.W.2d 476 (Tex. Crim. App. 1984)). If a vagueness challenge involves First Amendment concerns, the statute may be found facially invalid even though it may not be invalid as applied to appellant's conduct. *Long*,

931 S.W.2d at 288. Where no First Amendment rights are involved, the court need only examine the statute to determine whether the statute is impermissibly vague as applied to appellant's specific conduct. *Bynum*, 767 S.W.2d at 774. It is appellant's burden to prove the statute is unconstitutional as applied to him. *Id*.

Appellant was charged with and convicted of the offense of harassment, another offense defined in section 42.07 of the Penal Code. In pertinent part, this statute provides:

> (a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, he
>
> . . . .
>
> (4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another . . . .

TEX. PEN. CODE ANN. § 42.07(a)(4) (Vernon Supp. 1999).

A panel of this court has addressed the constitutionality of this subsection of the statute in *DeWillis v. State*, 951 S.W.2d 212 (Tex. App.–Houston [14th Dist.] 1997, no pet.). In *DeWillis*, the appellant was convicted of harassment by causing another person's telephone to ring repeatedly or repeatedly making anonymous telephone calls. *Id*. at 214, 217. The court held that subsection (a)(4) specifically defines the conduct necessary to "harass, annoy, alarm, abuse, torment, embarrass, or offend" as "caus[ing] the telephone of another to ring repeatedly" or "mak[ing] repeated telephone communications anonymously." *Id*. at 217 (citing to § 42.07(a)(4)). The court further held the statute contains a reasonable person standard by using the word "another," rather than the complainant. *Id*. Even if there were no reasonable person standard, the court found the offense sufficiently defined to put the offender on notice his conduct is unlawful. *Id*.

As this court observed in *DeWillis*, there is no authority for the proposition that making repeated telephone calls in a manner reasonably likely to harass and annoy another is a constitutionally protected activity under the First Amendment, we need only decide whether the statute is impermissibly vague as

applied to appellant's conduct. *See DeWillis*. 951 S.W.2d at 217. Appellant does not explain how this statute is unconstitutional as applied to him and appellant has brought forward no statement of facts from which this court may determine whether the statute is vague as applied to appellant. *Id*. Therefore, we hold that appellant has not established section 47.02(a)(4) is unconstitutionally vague.

Appellant next relies on the Texas Disciplinary Rules of Professional Conduct to support his position. Because appellant contends he was representing his father and step mother, he claims the Rules of Professional Conduct allow him to make repeated telephone communications in zealous representation of his clients.

Nothing in the record supports appellant's assertion that his father and stepmother were his clients. Furthermore, the Rules of Professional Conduct do not allow or encourage an attorney to engage in telephone harassment as described in section 42.07. Comment 6 of Rule 1.01 provides:

> Having accepted employment, a lawyer should act with competence, commitment, and dedication to the interest of the client and with zeal in advocacy upon the client's behalf. A lawyer should feel a moral or professional obligation to pursue a matter on behalf of a client with reasonable diligence and promptness despite opposition, obstruction or personal inconvenience to the lawyer. A lawyer's workload should be controlled so that each matter can be handled with diligence and competence. As provided in paragraph (a), an incompetent lawyer is subject to discipline.

TEX. DISCIPLINARY R. PROF. CONDUCT 1.01 cmt. 6 (1990), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G., app. A (Vernon 1998) (STATE BAR RULES art. X, § 9). This comment does not allow an attorney to make repeated telephone calls in a manner reasonably likely to harass or annoy another. Absent a statement of facts, we are unable to determine whether appellant's communications constitute zealous advocacy.

Rule 8.03, which concerns the reporting of professional misconduct, likewise provides no support for appellant's position. Rule 8.03 provides that a lawyer shall inform the appropriate authority if the lawyer has knowledge that another lawyer has committed a violation of applicable rules of professional conduct.

TEX. DISCIPLINARY R. PROF. CONDUCT 8.03(a) (1990). This section does not allow an attorney to make repeated annoying or harassing telephone calls to an attorney he suspects of misconduct.

Appellant also contends the statute violates the *jus cogens* international law pursuant to the International Covenant on Civil and Political Rights. We agree with the State that appellant presents nothing for review because he presents no argument on this issue. Appellant does not state how section 42.07(a)(4) violates the covenant. By failing to brief a ground of error or to cite any authority, an appellant presents nothing for review. *McWherter v. State*, 607 S.W.2d 531, 536 (Tex. Crim. App. 1980). We overrule point of error one.

Violation of the International Covenant on Civil and Political Rights

Appellant's second point of error raises a number of alleged violations of the International Covenant on Civil and Political Rights as follows:

> The regime of the United States of America, the State of Texas, and Harris County, Texas have violated the International Covenant on Civil and Political Rights, Adopted by the UN General Assembly Dec. 16, 1966, entered into force March 23, 1976; for the U.S. Sept. 8, 1992, 6 I.L.M. 368, 999 U.N.T.S. 171 and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [hereinafter called "the Torture Convention"], 39 U.N. GAOR Supp. (No. 51), 23 I.L.M. 1027 (1984), Entered into force June 26, 1987; for the U.S. April 1988; Senate consent Oct., 1988: See 136 Cong. Rec. S17486-92 (daily ed. October 27, 1990) 1) by stealing the Appellant's inheritance, 2) by bringing false and trumped up charges based upon known unconstitutional "get you" statutes, 3) by constantly keeping the Appellant's domicile under 24 hour surveillance, 4) by following the Appellant wherever he goes, 5) by arresting the Appellant under these false charges, 6) by placing the Appellant in solitary confinement for about 1 week under the false pretenses of having the Appellant undergo psychiatric evaluation, 7) by torturing the Appellant while he was in the Harris County, Texas jail by instituting sleep deprivation techniques [keeping lights on 24 hours per day], by placing him in a cell where the prisoner next door sounded as though he was being beaten by the Jail Guards on a daily basis, by placing the Appellant in a cell where the neighboring prisoners screamed all day long, and by confining the Appellant in a jail cell which had water on the floor during December, 8) by attempting to assassinate the Appellant by injecting him with dangerous drugs while he was confined in the Harris County jail, 9) by forcing the Appellant to undergo a "show" trial when Don Jackson, Judge, knew that the statute was unconstitutional [per the Texas Court of Criminal Appeals], 10) hounding all those who wish or feel a religious duty to help

> the Appellant so that they cannot or will not longer help him for fear of the current regime's wrath coming upon them and their families [arrests based upon trumped up charges (much like the Appellant), loss of privacy (constant telephone taps), loss of jobs, loss of income, etc. . .], 11) by tapping the Appellant's telephone or any pay telephone that the Appellant uses, 12) by tapping Phrogge Simons' [an avid supporter of the Appellant] beeper telephones, 13) by physically assaulting and attacking the Appellant, rearresting the Appellant on another "trumped up" criminal charge and again placing him in Don Jackson's Court, 14) refusing to provide a Statement of Facts to the Appellant so that he might bring other points of error before the Appellate Courts even though the Appellant is and has been in a Chapter 13 Bankruptcy proceedings, 15) causing the Appellant to file a Chapter Bankruptcy in April, 1995 after inflicting the harsh treatment and torture upon him when he was placed in jail during December, 1995, and 16) by acting in reference to the Appellant as totalitarian states generally act. [footnotes omitted][1]

Other than including complaints about the lack of a statement of facts and prosecution under an unconstitutional statute, appellant's complaints do not attack the validity of the judgment. These unsupported complaints that do not attack the validity of the judgment are inappropriate on appeal from a judgment of conviction and we will not address them. Having already overruled appellant's challenge to the constitutionality of the statute under which he was convicted, we turn to the complaint that appellant was improperly denied a statement of facts.

Rule 20.2 allows an appellant who is unable to pay for the appellate record to ask the trial court that the record be furnished free of charge. TEX. R. APP. P. 20.2. The request for a free record must be made by motion and affidavit to the trial court within the time for perfecting the appeal. *Id*. To prevail on a claim of indigency, an appellant must act with due diligence by filing a motion and affidavit in a timely manner and alleging and proving indigency at a hearing in the trial court. *See Tafarroji v. State*, 818 S.W.2d 921, 923 (Tex. App.–Houston [14th Dist.] 1991, no pet.).

Appellant states in his brief that he advised the trial court of his bankruptcy proceeding, but the record contains nothing to substantiate appellant's assertion there is a pending bankruptcy proceeding. The record contains no motion and affidavit requesting a free appellate record and nothing indicates that

---

[1] Appellant's vitriolic and groundless attacks on public officials, law enforcement, and other professionals, are not condoned by this court.

appellant advised the court reporter he had filed a motion and affidavit seeking a free record or that he made arrangements to pay the court reporter. Accordingly, we find no merit to appellant's complaint he was improperly denied a statement of facts. We overrule point of error two.

We affirm the trial court's judgment.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed December 30, 1999.

Panel consists of Justices Amidei, Edelman and Wittig.

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