Affirmed as Reformed and Opinion filed February 14, 2002.

In The

Fourteenth Court of Appeals

NO. 14-01-00485-CR

JUAN RAMON VALDEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 94-14176

O P I N I O N

Appellant, Juan Ramon Valdez, was charged with the felony offense of sexual assault of a child. Although appellant entered a plea of guilty, the trial court deferred a finding of guilt and placed him under the terms and conditions of probation for a period of seven years in accordance with a plea bargain agreement. Thereafter, the trial court adjudicated appellant's guilt for failing to abide by the conditions of probation and sentenced him to confinement in the Institutional Division of the Texas Department of Criminal Justice for three years. In his sole point of error, appellant contends the trial court erred in adjudicating

his guilt and assessing his punishment as a third, rather than second, degree felony. We reform and affirm.

On February 16, 1995, pursuant to a plea bargain agreement, appellant pleaded guilty to the offense of sexual assault of a child, a second degree felony, and was placed under probation for a period of seven years. *See* TEX. PEN. CODE ANN. § 22.011(f) (Vernon 1994). Although the written admonishments signed and initialed by appellant reflected the correct punishment range for this second degree felony of between two and twenty years' imprisonment,[1] the order placing appellant under the terms and conditions of community supervision erroneously noted the offense was a felony of the third degree.

Some six years later, on March 1, 2001, the State filed a motion to adjudicate appellant's guilt for failure to satisfy the terms and conditions of his probation. Appellant entered a plea of true to the motion, and punishment was assessed at three years' imprisonment. In the Judgment Adjudicating Guilt, signed April 2, 2001, appellant's offense was, however, again mistakenly classified a third degree felony. Appellant now complains this understating of the seriousness of his offense requires reversal. We disagree.

An appellate court has the power to correct and reform the judgment of the court below to make the record speak the truth when it has the necessary data and information to do so, or make any appropriate order as the law and the nature of the case may require. *See* TEX. R. APP. P. 43.2(b), 43.6; *see also Bigley v. State*, 865 S.W.2d 26, 27 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd.); *Norman v. State*, 642 S.W.2d 251, 253 (Tex. App.—Houston [14th Dist.] 1982, no pet.). Indeed, such reformation may be mandatory. *Waters v. State*, 137 Tex. Crim. 41, 127 S.W.2d 910, 910 (1939). Accordingly, we reform the Judgment Adjudicating Guilt to reflect that appellant confessed to the second degree felony offense of sexual assault of a

[1] "An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years." TEX. PEN. CODE ANN. § 12.33(a) (Vernon 1994).

child on February 16, 1995, and was finally adjudged guilty of that offense on April 2, 2001.

As reformed, the judgment is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed February 14, 2002.

Panel consists of Justices Anderson, Hudson, and Frost.

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