Affirmed and Opinion filed February 17, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00384-CR

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LANTELL GREEN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause No. 793,658

O P I N I O N

Appellant entered a plea of guilty, without an agreed recommendation, to the felony offense of theft of an automobile of a value of more than $20,000 [twenty thousand dollars] and less than $100,000 [one hundred thousand dollars]. Upon the completion of a pre-sentence investigation, the court assessed punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for four years.

Appellant's appointed counsel filed a motion to withdraw from representation of appellant along with a supporting brief in which she concludes that the appeal is wholly frivolous and without merit. The

brief meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978).

In her effort to comply with the requirements of *Anders*, appellate counsel raises, then rejects, three potential points of error which might arguably support the appeal: (1) appellant's plea of guilty was not made knowingly and voluntarily; (2) appellant was denied effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution because of counsel's failure to file a motion for probation prior to the entry of the guilty plea; and (3) appellant was denied effective assistance of counsel as guaranteed by Article 1 § 10 of the Texas Constitution because of counsel's failure to file a motion for probation prior to the entry of the guilty plea. We agree with appellate counsel's determination that the potential points of error are without merit.

The voluntariness of a guilty plea is determined by the totality of the circumstances. *See Munoz v. State*, 840 S.W.2d 69, 74 (Tex. App.–Corpus Christi 1992, pet. ref'd). Proper admonishment by the trial court creates a *prima facie* showing that a guilty plea was knowing and voluntary. *See Tovar-Torres v. State*, 860 S.W.2d 176, 178 (Tex. App.–Dallas 1993, no pet.). The burden then shifts to the defendant to prove that he did not understand the consequences of his plea. *See id*. Further, when a defendant indicates at the plea hearing that he understands the nature of the proceeding and is pleading guilty because the allegations in the indictment are true, not because of any outside pressure or influence, he has a heavy burden to prove on appeal that his plea was involuntary. *See Jones v. State*, 855 S.W.2d 82, 84 (Tex. App.–Houston [14th Dist.] 1993, pet. ref'd).

The trial court properly admonished appellant both orally and in writing. During the plea proceeding, appellant entered a plea of guilty, specifically stating that he was entering the plea without force or threats and that he was pleading guilty solely because he was guilty. The trial court admonished appellant regarding the full range of punishment for the offense charged and appellant indicated that he understood the range. The court further advised appellant that since there was no plea bargain agreement, there were no guarantees what punishment the court would assess. Appellant indicated his understanding. In the face

of such admonishments, appellant bears the heavy burden of establishing that his plea was not voluntary. *See Tovar-Torres v. State*, 860 S.W.2d at 178; *Jones v. State*, 855 S.W.2d at 84.

The record from the plea proceeding demonstrates that appellant was properly admonished, gave appropriate responses to the trial court's inquiries, and gave no indication that his plea was not free and voluntary. He stated that he understood the proceedings and that he was pleading guilty solely because he was guilty. He also stated that he understood that there was no agreement regarding the punishment the court might assess. The record does not show that any promise was made to appellant by either the trial court or counsel, or that any such promise induced his plea. A guilty plea is not involuntary simply because the sentence exceeded what the appellant expected. *See West v. State*, 702 S.W.2d 629, 633 (Tex. Crim. App.1986); *Russell v. State*, 711 S.W.2d 114, 116 (Tex. App.–Houston [14th Dist.] 1986, pet. ref'd). We agree with appellate counsel's conclusion that there is no merit to this potential point of error.

Similarly, the second and third arguable points of error raised by appellate counsel are without merit. As appellate counsel correctly notes, the provision of the Texas Code of Criminal Procedure which requires a defendant to file a written motion for community supervision before the trial begins applies only when community supervision is assessed by a jury. *See* TEX. CODE CRIM. PROC. ANN. Art. 42.12, § (4)(e) (Vernon Supp. 2000). The Code of Criminal Procedure does not require a similar filing for judge-ordered community supervision. *See id.* § 3; *Flanagan v. State*, 675 S.W.2d 734, 747 (Tex. Crim. App. 1982). The evidence in the record is insufficient to rebut the presumption that counsel's conduct fell within the wide range of reasonable professional assistance. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674 (1984); *Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App.1994).

A copy of counsel's brief was delivered to appellant. Appellant was advised of the right to examine the appellate record and to file a *pro se* response. As of this date, appellant has not responded.

We have carefully reviewed the record and counsel's brief and agree that the appeal is wholly frivolous and without merit. Further, we find no reversible error in the record.

Accordingly, the judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed February 17, 2000.

Panel consists of Justices Amidei, Anderson, and Frost

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