Affirmed and Opinion filed March 1, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00523-CR

VICTOR G. LEWIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 752,566

O P I N I O N

Appellant entered a guilty plea without an agreed recommendation to the felony offense of aggravated assault. The court deferred adjudication of guilt and placed appellant on probation for six years. Subsequently, the State filed a motion to adjudicate guilt. Upon appellant's plea of not true, the court conducted a hearing, adjudicated appellant's guilt and assessed punishment at confinement for six years in the Institutional Division of the Texas Department of Criminal Justice.

Appellant's appointed counsel filed a motion to withdraw from representation of

appellant along with a supporting brief in which he 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).

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. Appellant has filed a response alleging the trial court abused its discretion when it failed to accept appellant's plea of true and failed to follow a plea-bargain agreement. Appellant requests specific performance of a plea bargain agreement in which he was to receive two years' imprisonment upon his plea of true to allegations in the State's motion to adjudicate guilt.

The record contains a document entitled "Stipulation of Evidence" signed by appellant, appellant's attorney, the prosecuting attorney and the court clerk which sets forth appellant's intention to enter a plea of true to the allegations in an attached State's motion to adjudicate in exchange for a two year prison sentence. The stipulation is not signed by the trial judge. The docket sheet contains stamped indicia that the court was preparing to accept a plea of true from appellant on February 22, 2000; however, the stamped paragraphs have been crossed out and left blank by the court clerk. The docket sheet indicates on March 9, 2000, appellant appeared in court and entered a plea of not true to the allegations in the motion to adjudicate. In the space in the judgment for terms of the plea bargain, the court clerk has written in bold black letters "NO AGREED REC," which covers an earlier inscription that is now illegible. Following a hearing, appellant received a six year sentence.

From the record before us it is impossible to determine why appellant's plea of true was not heard by the court. It is possible that appellant changed his mind about the plea bargain agreement prior to the plea hearing and decided to go to the judge without a recommendation in hopes of receiving a lighter sentence than that being offered by the State.

In fact, the record from the hearing on the motion to adjudicate indicates that appellant requested that the court deny the State's motion to adjudicate his guilt and instead continue him on deferred adjudication probation. The record before us does not support appellant's allegation that he was unfairly prevented from completing his plea bargain. Without affirmative support in the record, no arguable ground of error is presented for review.

Appellant's reliance on *Perkins v. Court of Appeals for Third Supreme Judicial District of Texas, at Austin*, 738 S.W.2d 276 (Tex. Crim. App. 1987) in support of his request for specific performance of the plea bargain agreement is misplaced. In *Perkins*, the record clearly reflected that the trial judge accepted the defendant's plea of guilty and approved the plea bargain agreement. Thereafter, after receiving new information regarding the defendant's culpability as a party, the State withdrew its plea bargain offer and the trial judge refused to accept the agreement he had previously approved. The Court of Criminal Appeals held that when the defendant enters into a plea bargain agreement with the prosecutor, and the trial judge approves the agreement, and the agreement is not kept, the proper relief is either specific performance of the agreement, if it can be enforced, or withdrawal of the plea if it cannot. *See id.* at 283-84. The case before us is distinguishable because there is no evidence in the record that the plea bargain agreement was ever approved by the trial court. Thus, appellant is not entitled to specific performance.

Furthermore, appellant's argument that the trial court abused its discretion by not accepting his plea of true and proceeding to a hearing upon a plea of not true may not be raised on appeal. This argument represents an attack on the trial court's determination to proceed with adjudication of guilt and may not be raised on appeal. The trial court's decision to proceed with an adjudication of guilt is one of absolute discretion and is not reviewable. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, §5(b) (Vernon Supp. 2000); *Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999).

Article 42.12, section 5(b) expressly allows an appeal of all proceedings after the

adjudication of guilt on the original charge. *See* TEX. CODE CRIM. PROC ANN. art. 42.12 § 5(b) (Vernon Supp. 2000); *Olowosuko v. State*, 826 S.W.2d 940, 941-42 (Tex. Crim. App. 1992). Examples of proceedings after adjudication that may be appealed include the assessment of punishment and the pronouncement of sentence. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (Vernon Supp. 2000); *Rodriquez v. State*, 972 S.W.2d 135, 138 (Tex. App.—Texarkana 1998), *aff'd on other grounds*, 992 S.W.2d 483 (Tex. Crim. App. 1999). Since appellant's complaint concerns matters occurring prior to the adjudication of guilt, nothing is presented for review.

We have carefully reviewed the record and counsel's brief and agree with counsel 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 and the motion to withdraw is granted.

PER CURIAM

Judgment rendered and Opinion filed March 1, 2001.
Panel consists of Chief Justice Murphy and Justices Hudson and Seymore.[1]
Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Chief Justice Paul C. Murphy sitting by assignment.