Affirmed and Opinion filed March 1, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-00486-CR

GEORGE T. HUNTER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause No. 792,890

O P I N I O N

Appellant, George T. Hunter, entered a plea of no contest to the charge of indecency with a child and was sentenced to a term of fifteen years in the Texas Department of Corrections, Institutional Division. In his sole point of error, appellant challenges the voluntariness of his plea. We affirm.

Background

Appellant, a school teacher in the Houston Independent School District, was charged

with indecency with a child after a student reported that appellant had touched her "private parts." On November 10, 1998, appellant entered a plea of no contest and signed a document entitled "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession." The court ordered a pre-sentence investigation ("PSI") report, and a sentencing hearing was scheduled for February 12, 1999. At the February hearing, the State presented one witness, the complainant's mother. Appellant then testified as the only witness for the defense. At the close of testimony and after hearing argument from both counsel, the trial court found appellant guilty and assessed punishment at fifteen years confinement in the Texas Department of Criminal Justice, Institutional Division. This appeal followed.

In his sole point of error, appellant contends that the trial court should have *sua sponte* withdrawn his no contest plea because it was given involuntarily. He rests this contention upon the assertion that "the documentary evidence and the testimonial" establishes that he persistently and continually denied the allegations in the information, notwithstanding a plea to the contrary.

Discussion

In determining whether a guilty plea was given involuntarily, we examine the entire record. *Cantu v. State*, 988 S.W.2d 481, 484 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd). A record reciting the defendant was properly admonished[1] is *prima facie* evidence that his plea was made knowingly and intelligently, and hence voluntarily. *Reissig v. State*, 929 S.W.2d 109, 112 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd) (citing *Fuentes v. State*, 688 S.W.2d 542, 544 (Tex. Crim. App. 1985)). The burden then shifts to the defendant to show he entered his plea not understanding the consequences that would

[1] Article 26.13 of the Texas Code of Criminal Procedure instructs the trial court on the admonishments that must be given prior to accepting a plea of guilty or *nolo contendere*. TEX. CODE CRIM. PROC. ANN. art. 26.13 (Vernon Supp. 2000).

follow. *Id.* We presume the correctness of a recital in the judgment regarding the voluntariness of a *nolo contendere* plea where the record is otherwise silent. *Id.* (citing *Miller v. State*, 879 S.W.2d 336, 338 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd)).

Appellant does not contend he was improperly admonished.[2] In fact, he does not contend that he didn't understand the consequences of his plea. Appellant's argument, in essence, is that he faced a difficult situation at the sentencing hearing—having to "accept responsibility" while at the same time maintaining his innocence.[3] In support of his argument, appellant directs us to the sentencing hearing and the PSI report.

The difficulty of a decision does not, of itself, render that decision involuntary. *See, e.g., Jamail v. State*, 787 S.W.2d 372 (Tex. Crim. App. 1990) (finding defendant waived right to counsel where he believed requesting attorney while being videotaped would cause him to appear guilty); *Norton v. State*, 930 S.W.2d 101 (Tex. App.—Amarillo 1996, pet. ref'd) (finding defendant waived right to have partisan psychiatric expert appointed where, on advice of counsel, he withdrew insanity defense); *Burks v. State*, 693 S.W.2d 747 (Tex. App.—Houston [14th Dist.] 1985, pet. ref'd) (finding defendant waived right to confront witnesses where he agreed to stipulated facts). We find that appellant has failed to carry his burden to establish his plea was entered into without understanding the consequences of his plea.

Having found appellant's plea was voluntary, we turn to whether the trial court was required to *sua sponte* withdraw appellant's plea. In the PSI report, appellant denied having committed the offense. In response to questions by the prosecutor at the sentencing hearing,

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[2] Nor could he. Appellant signed the written admonishments and initialed every paragraph contained therein—34 in all.

[3] Appellant waived his right to have a court reporter at the plea hearing. Thus, we are not faced with the situation of a defendant denying the allegations against him while "accepting responsibility" during the proceeding to determine guilt or innocence.

appellant refused to either admit or deny the allegations in the information. Instead, he said several times that he would "accept responsibility." At one point, however, he denied having placed his hands down the student's pants.

The law in Texas is well settled. A trial court's decision whether to withdraw a plea of guilty or *nolo contendere* is reviewed under an abuse of discretion standard. *Griffin v. State*, 703 S.W.2d 193, 197 (Tex. Crim. App. 1986) (op. on reh'g); *Stone v. State*, 951 S.W.2d 205, 207 (Tex. App.—Houston [14th Dist.] 1997, no pet.). A trial court is not required to withdraw a defendant's plea of guilty or no contest after it has adjudicated the defendant's guilt or has taken the case under advisement, even if evidence is later admitted raising an issue as to the defendant's guilt. *Moon v. State*, 572 S.W.2d 681, 682 (Tex. Crim. App. 1978); *Solis v. State,* 945 S.W.2d 300, 302 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd). Ordering a PSI constitutes taking the case under advisement. *Stone*, 951 S.W.2d 207.

The facts in *Stone* are nearly identical to the facts in this case. Stone entered a plea of *nolo contendere*, and the judge took the case under advisement pending a PSI. Three months later—and moments before the judge was about to pronounce sentence—Stone requested permission to withdraw his plea and enter a plea of not guilty, which was denied. This Court held that the trial court did not abuse its discretion because it had already taken the case under advisement. *Id.*

As discussed above, the judge here ordered a PSI the day appellant stipulated to the evidence and signed a judicial confession. Accordingly, the judge took the case under advisement in November, and on authority of *Moon*, was not required to withdraw appellant's plea, even if an issue were raised as to his innocence at the sentencing hearing. Accordingly, we hold that the trial court did not abuse its discretion by failing to withdraw *sua sponte* appellant's plea of no contest.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed March 1, 2001.

Panel consists of Justices Yates, Wittig and Frost.

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