Affirmed and Opinion filed March 30, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00211-CR

LATORSHA REQUIL HOLMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 339TH District Court
Harris County, Texas
Trial Court Cause No. 766,505

O P I N I O N

Appellant, Latorsha Holman, argues on this appeal that her guilty plea was involuntary because of significant misinformation given her by a court's deputy. For the reasons stated below, we affirm.

Background

Appellant was charged with aggravated robbery. The complainant was the wife of a prominent local attorney. On the day of her trial, shortly before voir dire was to begin, appellant decided to plead guilty. Appellant and her trial counsel signed plea forms acknowledging her plea was voluntary. At the plea hearing, appellant stated that she read and understood the plea forms. Appellant and her counsel also

responded affirmatively to the trial court's questioning whether her plea was voluntary. The court accepted the plea and assessed twenty-five years confinement.

Approximately three weeks later, appellant, through her newly appointed appellate counsel, filed a "Request to Withdraw Plea and Motion for New Trial." At the hearing, appellant stated the court's process server had made the following unsolicited comment to her approximately two hours before she made her plea:

> You know, whether you are guilty or didn't do it or did it, I have seen this happen a hundred times. With the people you are dealing with, you can't win. You take this thing to a jury trial and you can get anywhere from 60 to 70 years.

Appellant also presented two witnesses who had counseled her in jail. They testified they were shocked that appellant had decided to plea bargain because she had steadfastly maintained her desire to go to trial.

Standard of Review

The standard of review when an appellant contends that his plea was not knowingly and voluntarily given is whether the record discloses that defendant's plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. *See North Carolina v. Alford*, 400 U.S. 25, 31, 91 S.Ct. 160, 164, 27 L.Ed.2d 162 (1970). A defendant's plea of guilty will not support a conviction if that plea is made after the defendant receives significant misinformation from the court or one of its officers. *McGuire v. State*, 617 S.W.2d 259, 261 (Tex. Crim. App. 1981).

The voluntariness of a guilty plea is determined by the totality of the circumstances. *Griffin v. State*, 703 S.W.2d 193, 196 (Tex. Crim. App. 1986); *Edwards v. State*, 921 S.W.2d 477, 479 (Tex. App.--Houston [1st Dist.] 1996, no pet.). When the record shows that the defendant received an admonishment on punishment, it is a prima facie showing that the plea was knowing and voluntary. *Ex parte Williams*, 704 S.W.2d 773, 775 (Tex. Crim. App. 1986); *Forcha v. State*, 894 S.W.2d 506, 509 (Tex. App.--Houston [1st Dist.] 1995, no pet.). The burden then shifts to the defendant to show that she entered her plea without understanding the consequences. *Fuentes v. State*, 688 S.W.2d 542, 544 (Tex. Crim. App. 1985). Once an accused attests that she understands the nature of her plea and that it was voluntary, she has a heavy burden on appeal to prove otherwise. *See Crawford v. State*, 890

S.W.2d 941, 944 (Tex. Crim. App. 1994). Once a plea is entered, the decision to allow an accused to withdraw her plea is within the sound discretion of the trial court. *Parker v. State*, 626 S.W.2d 738 (Tex. Crim. App. 1982).

Discussion

Appellant claims that her plea was involuntary because she acted on misinformation and advice of a court's officer. She argues the deputy's comment amounts to an assertion that, guilty or innocent, she was doomed to conviction and long-term imprisonment because of the complainant's identity. This was further exacerbated by the fact that it came from a person who, as a part of the court's staff, knew something that appellant did not.

In response, the State points out that appellant was properly admonished at the plea hearing, thus making a prima facie showing that her plea was knowing and voluntary. Additionally, appellant admitted that she (1) had responded affirmatively to the court's multiple queries if she really wanted to plead guilty; (2) had responded affirmatively to the trial court's multiple queries if she really understood what was going on; (3) understood the plea papers she signed to be a plea of guilty; and (4) had understood the punishment range was up to life imprisonment. Appellant testified, however, that at the time of the plea hearing, she was mentally "not there."

Appellant's trial attorney also testified at the plea withdrawal hearing. He stated that appellant had told him about the deputy's comment, yet he did not bring it up at the plea hearing. He also testified that despite the deputy's comment, he was "certain that [appellant] understood what she was doing" at the plea hearing. He testified that he had told appellant she had no chance of prevailing at trial and only a very slim chance of receiving a light sentence. He told her that because of the victim and the circumstances, this was not the type of case that she should try.

At the withdrawal hearing, the court noted extra precautions were taken to make certain appellant was waiving a trial, that plea admonishments were ample, and that trial counsel believed his client was entering her plea freely and voluntarily (even though appellant had already informed him of the deputy's comment).

We are presented with virtually an uncontroverted record, except that appellant controverts herself. At the plea hearing, neither appellant nor her attorney mentioned the deputy's alleged comment to the court, that appellant was relying on misinformation, or that anything improper had occurred. Both repeatedly and unequivocally assured the court that appellant's plea was voluntary. Yet not long after making her plea, appellant sought to withdraw it because the deputy's misinformation and its devastating effect rendered her plea involuntary.

Appellant's inconsistent testimony from one hearing to the next created fact issues for the court to resolve. As trier of fact, the court was the exclusive judge of the credibility of the witnesses and the weight to be given their testimony. *See Mattias v. State*, 731 S.W.2d 936, 940 (Tex. Crim. App. 1987). It was entitled to discount or disbelieve appellant's testimony, even if it was uncontroverted. *See Kirkwood v. State*, 488 S.W.2d 824, 826 (Tex. Crim. App. 1973); *see Reissig v. State,* 929 S.W.2d 109, 113 (Tex. App.–Houston [14th Dist.] 1996, pet. ref'd) (court may disbelieve defendant's uncontroverted allegation that attorney's misinformation caused involuntary plea). After the court conducted a thorough evidentiary hearing on appellant's allegations, it denied appellant's motion.

Since the court found against appellant, we are required to defer to implied findings of historical fact that the record supports, especially when they are based on an evaluation of credibility and demeanor. *See State v. Terrazas*, 4 S.W.3d 720, 730 (Tex. Crim. App. 1999) (citing *Guzman v. State,* 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). The essential implied finding supported by the record is that any comment the deputy may have made did not cause appellant to make an involuntary plea or misunderstand the nature of her plea. We hold this implied finding supports the conclusion that appellant's original plea was made voluntarily. In view of this, we cannot say the trial court abused its discretion in refusing to allow appellant to withdraw her plea.[1]

We overrule appellant's sole point of error. The judgment of the trial court is affirmed.

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[1] We trust the tenured and respected trial court duly considered the alleged serious breach of conduct by its deputy. The idea that an officer connected with the court would make such a comment is both disturbing and probably violates of the Code of Judicial Conduct. Under other circumstances, such a comment could warrant reversal.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed March 30, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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