Dismissed and Opinion filed July 12, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00669-CR

EBONY MICHELLE TEMPLETON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the184th District Court
Harris County, Texas
Trial Court Cause No. 809,633

M E M O R A N D U M O P I N I O N

Appellant, Ebony Michelle Templeton, entered a plea of guilty to the felony offense of possession of a controlled substance, namely cocaine, with intent to deliver. The court accepted appellant's plea and deferred a finding of guilt by placing appellant on ten years community supervision. Later, the State moved to adjudicate appellant's guilt on this offense. The trial court revoked appellant's community supervision, adjudicated appellant's guilt on the offense, and assessed punishment at ten years and one day in the Institutional Division of the Texas Department of Criminal Justice.

In nine points of error, appellant asserts that the trial court abused its discretion by

adjudicating appellant's guilt for probation violations. Specifically, appellant contends that the State did not produce evidence that she failed to comply with the terms of her community supervision. We dismiss this appeal.

I. Original Plea Proceeding

On April 16, 1999, appellant waived trial by jury, and without a plea bargain agreement, pled guilty to the offense of felony possession of cocaine with the intent to deliver. Appellant was placed on ten years deferred adjudication for the offense. On January 13, 2000, the State filed a motion to adjudicate guilt. The State's motion was based on appellant's numerous violations of her conditions for probation. In particular, the State asserts appellant violated the terms and conditions of her community supervision by (1) failing to report to her community supervision officer; (2) failing to present written verification of employment; (3) failing to participate in the community service program to obtain her G.E.D.; (4) failing to pay a supervision fee; (5) failing to pay her fine and court costs; (6) failing to reimburse Harris County for compensation paid to appointed counsel; (7) failing to pay a laboratory processing fee; (8) failing to participate in the Harris County Community Supervision and Corrections Department Intensive Supervision Program Specialized Caseload; (9) failing to participate in the community based program: Alcoholics/Narcotics Anonymous meetings; and (10) failing to participate in the Texas Drug Offender Education Program. After a hearing on April 20, 2000, the trial court found these allegations true and adjudicated her guilt, sentencing appellant to confinement for ten years and one day.

II. Analysis

On appeal, appellant contends that without sufficient evidence to prove she violated the conditions of her probation, there was no basis for the trial court to adjudicate her guilt, and, therefore, the trial court abused its discretion in adjudicating her guilt. We disagree.

Appellant is attempting to appeal from the trial court's decision to adjudicate on the original charge. The State replies that appellant's points of error are merely allegations of

error in the trial court's decision to adjudicate and therefore the points should be dismissed because a defendant has no right to appeal that type of decision. *See* TEX. CODE CRIM. PROC. ANN. Art. 42.12, § 5(b) (Vernon Supp. 2001); *Phynes v. State*, 828 S.W.2d 1, 2 (Tex. Crim. App. 1992). In *Phynes*, the court stated:

> Art. 42.12, § 5(b) specifically provides that there shall be no appeal taken from the trial court's determination to adjudicate. It has long since been recognized that the United States Constitution does not require a state to provide appellate courts or a right to appellate review of criminal convictions. It is clear, therefore, that a state may limit or even deny the right to appeal a criminal conviction. Similarly, as there is nothing in the Texas Constitution which guarantees the right to appeal a criminal conviction, that right is only as provided by the legislature. It naturally follows that when a legislative enactment says an accused may not appeal a determination to adjudicate, there is no right to do so. Therefore, even if appellant's right to counsel was violated, he may not use direct appeal as the vehicle [by] which to seek redress.

828 S.W.2d at 2 (footnotes omitted).

The Court of Criminal Appeals has had an occasion to revisit this issue in *Connolly v. State*, 983 S.W.2d 738 (Tex. Crim. App. 1999). In *Connolly*, the court discussed *Phynes* and *Olowosuko v. State*, 826 S.W.2d 940 (Tex. Crim. App. 1992) to emphasize its analysis of Article 42.12, § 5(b) as follows: "In all of these cases, we have tried to make clear that, given the plain meaning of Article 42.12, § 5(b), an appellant whose deferred adjudication probation has been revoked and who has been adjudicated guilty of the original charge, may not raise on appeal contentions of error in the adjudication of guilt process." *Id*. at 741. Indeed, in *Connolly* the court held that the proper disposition of such an appeal is dismissal without reaching the merits. *Id*.

We hold appellant's points of error present an appeal from the trial court's determination to proceed with an adjudication of guilt in contravention of the clear language in Article 42.12, § 5(b). A trial court's decision to proceed with an adjudication of guilt is one of absolute nonreviewable discretion. *Olowosuko*, 826 S.W.2d at 942;

Abdallah v. State, 924 S.W.2d 751, 754 755 (Tex. App.—Fort Worth 1996, pet. ref'd).

Accordingly, we dismiss this appeal.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed July 12, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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