Affirmed and Opinion filed July 12, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-00815-CR

RONNIE LEE GREENROAD, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 802,167

O P I N I O N

Pursuant to a plea agreement, Ronnie Lee Greenroad ("appellant") entered a plea of nolo contendere to the offense of promotion of prostitution. The trial court deferred adjudication of appellant's guilt and placed him on community supervision for two years and assessed a $4,000.00 fine.

Within the two year probationary period, appellant was indicted for the felony offense of driving while intoxicated ("DWI"). The State filed a motion to adjudicate appellant's guilt in the promotion of prostitution case, alleging that the DWI offense violated the terms of appellant's probation. The State reduced the felony DWI charge to

a misdemeanor DWI offense. Pursuant to an agreed recommendation, appellant entered a plea of guilty to the misdemeanor offense of DWI, and also pled true to the allegation in the State's motion to adjudicate guilt in the prostitution case. The trial court accepted appellant's plea in both cases and assessed punishment at eight months' confinement in the Harris County Jail. Appellant filed a timely written motion for new trial in each case, in which he contended that his pleas of true and of guilty were involuntary.[1] After a hearing, the trial court denied both motions.[2]

DISCUSSION AND HOLDING

In his sole point of error, appellant contends that the trial court erred in denying his motion for new trial. Appellant argues that his plea of guilty was involuntary because his trial counsel erroneously advised him that even if he pled true to the allegations in the motion to adjudicate his guilt for the offense of promotion of prostitution, he would still be able to work in, or manage, a sexually oriented business.

A plea must be knowingly and voluntarily made in order to be constitutionally valid. *Ruffin v. State*, 3 S.W.3d 140, 145 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd). The entire record must be examined to determine whether the plea was knowingly and voluntarily made. *Cantu v. State*, 988 S.W.2d 481, 484 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd).

In examining the record, when it reflects that the trial judge properly admonished

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[1] We have jurisdiction to hear this appeal, despite the requirements of Texas Rule of Appellate Procedure 25.2(b) and *Cooper v. State*, because this is an appeal from a plea in a misdemeanor DWI case. Rule 25.2(b) and *Cooper*, apply only to appeals from pleas of guilty or nolo contendere in felony cases. TEX. R. APP. P. 25.2(b); *Cooper v. State*, No. 100-99, 2001 WL 321579, at *1 (Tex. Crim. App. April 4, 2001).

[2] Although appellant, in his brief before the Court, challenges his convictions in both the promotion of prostitution case (cause number 721,322) and the DWI case (cause number 802167), this Court previously dismissed, for want of jurisdiction, appellant's appeal in cause number 721,322. *Greenroad v. State*, No. 14-99-00814-CR, slip. op. at 2, 2000 WL 1721156, at *1 (Tex. App.—Houston [14th Dist.] Oct. 12, 2000, no pet. h.) (not designated for publication). Therefore, only appellant's complaint regarding his DWI conviction is before us in this appeal.

the defendant on the consequences of his plea, there is a prima facie showing that the defendant entered a knowing and voluntary plea. *Id.* This does not prevent the defendant from challenging his plea, but he is then encumbered with a heavy burden to show a lack of voluntariness by demonstrating that he did not fully understand the consequences of his plea, or that he was misled or harmed by the admonishment. *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998); *Dusenberry v. State*, 915 S.W.2d 947, 949 (Tex. App.—Houston [1st Dist.] 1996, pet. ref'd).

In this case, the record reflects that the trial court properly admonished appellant about the consequences of his guilty plea to the DWI charge, and that appellant understood those admonishments. Both appellant and his trial counsel signed the court's admonishment form, indicating that appellant entered the plea voluntarily. Also, appellant testified at the plea hearing that he chose to plead guilty to the DWI charge because he was guilty of the offense, and for no other reason. He further stated that no one had promised him anything in exchange for his plea, and that he was satisfied with his trial counsel's representation of him. This evidence constitutes a prima facie case that the DWI plea was voluntary. *Curry v. State*, 861 S.W.2d 479, 484 (Tex. App.—Fort Worth 1993, pet. ref'd).

To rebut this evidence, appellant points to his own testimony at the motion for new trial hearing and the motion for new trial itself. In his testimony, appellant stated that he only pled guilty because his trial counsel told him that he could continue to work in or manage a sexually oriented business. The motion for new trial, signed by trial counsel, similarly states that, while the Houston City Ordinance pertaining to sexually oriented businesses states that conviction for aggravated promotion of prostitution is a ground for denial, revocation, or refusal to renew a permit to further participate in a sexually oriented business, trial counsel assured him that he could continue managing a sexually oriented business, despite his conviction.[3]

[3] The Houston City Ordinance that affects whether appellant will be able to obtain a permit for engaging in a sexually oriented business states that a permit holder's permit may be revoked if the police chief or his designee has reasonable grounds to believe that the permit holder has been convicted of or spent time

We find nothing in the motion for new trial or in the appellate brief that would explain why the DWI plea – as opposed to the promotion of prostitution plea – was involuntary. The testimony and discussion relates almost solely to the promotion of prostitution case, which is not before us. The only testimony as to the DWI plea confirms its voluntariness; according to appellant, his trial counsel advised, "no matter what happened[,] that [pleading guilty] was a [sic] best thing to do, that he advised me that the charge of the DWI case didn't matter if we won or lost, still [sic] wouldn't make any difference." Although appellant stated that he had meritorious defenses to the DWI charge, which he did not pursue based on counsel's advice, the record does not reveal what those defenses were or why counsel recommended he plead guilty in spite of them. Thus, the record does not support a claim that the DWI plea was involuntary. On this state of the record, the trial court, in its discretion, could have found that appellant failed to demonstrate how trial counsel's advice affected the DWI plea.

In short, the trial court did not abuse its discretion in refusing to find that appellant's plea to the DWI case was involuntary. Appellant's sole point of error is overruled, and we affirm the judgment of the trial court.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed July 12, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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in jail for the offense of promotion of prostitution. HOUSTON, TEX. CODE OF ORDINANCES, ch. 28, art. VIII, § 28-257 (1997). The language does not indicate that denial of the permit is mandatory. Moreover, the State introduced evidence that appellant had received approval to continue operating a sexually oriented business.