Affirmed and Opinion filed August 17, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00703-CR

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RUBEN NARRO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 23rd District Court
Brazoria County, Texas
Trial Court Cause No. 32,777

O P I N I O N

Appellant, Ruben Narro, pled guilty to attempted aggravated robbery and was sentenced to twelve years imprisonment. On appeal, he argues (1) the trial court abused its discretion by considering the recommendation in the pre-sentence report; and (2) his guilty plea was not freely and voluntarily given.[1]

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[1] Appellant also brought two points of error regarding the timeliness of his statutory admonishments and his written waiver and consent. These points were resolved by the trial court's findings of fact in which it found the pertinent documents were signed February 5, 1999, not December 11, 1998.

Appellant and another man, Jose Garcia, attempted to rob a small motel. Equipped with a mask, bandanna, and a sawed-off shotgun, they drove to the motel. Appellant covered his face with the mask. Appellant and his accomplice exited the car and walked to the motel office, where they found the door locked. Foiled by the locked door, the two men fled. The motel clerk called the police and gave a description of car. A few minutes later, the two men were arrested.

Appellant was indicted for attempted aggravated robbery and possession of a deadly weapon. The state dropped the possession charge before a plea was entered. Appellant pled guilty, but the trial court withheld a finding of guilt until a pre-sentence report could be completed.

Consideration of the Pre-Sentence Report

Contending he was a "prime candidate" for probation, appellant argues that the trial court abused its discretion in considering the pre-sentence report recommending imprisonment. He relies on *Sattiewhite v. State*, 786 S.W.2d 271 (Tex. Crim. App. 1989) for the proposition that victim recommendations should not be considered by a trial court in sentencing. However, a pre-sentence investigation report prepared by the Community Justice Assistance Division of the Texas Department of Criminal Justice is not a victim recommendation. A trial court may properly consider a pre-sentence report when sentencing a defendant *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 9(a) (Vernon Supp.1999). Appellant's point of error is over-ruled.

Voluntariness of the Plea

Appellant argues that when the state dropped the possession charge, he believed the trial court was precluded from making any affirmative finding regarding the use or exhibition of a deadly weapon. He contends that had he known the state would seek such a finding, he would not have pled guilty.

The voluntariness of a guilty plea is determined by the totality of the circumstances. *See Edwards v. State*, 921 S.W.2d 477, 479 (Tex. App.–Houston [1st Dist.] 1996, no pet.). When a defendant attests, as appellant did below, that he understands the nature of his plea and that it was voluntary, he has a heavy burden to prove on appeal that the plea was involuntary. *Id*.

Appellant's indictment for attempted aggravated robbery specifically alleged that he "did use and exhibit a deadly weapon, namely a firearm." Furthermore, the pre-sentence report, which was prepared *after* the possession charge was dropped, expressly stated the punishment range available if the court made an affirmative finding of the use of a deadly weapon. This report was reviewed by appellant's counsel before the court made a finding of guilt. There is no evidence, other than appellant's bare assertion, that his plea was involuntary.

Appellant's point of error is overruled, and the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed August 17, 2000.
Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.
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