

Dismissed and Opinion filed August 23, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00535-CR

AUBREY LEE BRENT, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 240th District Court
Fort Bend County, Texas
Trial Court Cause No. 27,019**

OPINION

Appellant pled guilty to the offense of aggravated sexual assault. On February 27, 1996, in accordance with the terms of a plea bargain agreement, the trial judge deferred adjudication of guilt and placed appellant on community supervision for ten years. On December 3, 1999, the State filed a motion to adjudicate guilt. After a hearing, on April 4, 2000, the trial court found appellant guilty and assessed punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for twenty-five years.

Appellant filed a timely notice of appeal stating he was appealing a jurisdictional defect. *See* TEX. R. APP. P. 25.2(b)(3). The requirements of Rule 25.2(b)(3) apply to an appeal from a judgment adjudicating guilt when, as in the present case, the State recommended deferred adjudication probation at the original plea. *See Watson v. State*, 924 S.W.2d 711, 714-15 (Tex. Crim. App. 1996).

Rule 25.2(b)(3) of the Texas Rules of Appellate Procedure provides that when an appeal is from a judgment rendered on a defendant's plea of guilty or nolo contendere and the punishment assessed does not exceed the punishment recommended by the State and agreed to by the defendant, the notice of appeal must: (1) specify that the appeal is for a jurisdictional defect; (2) specify that the substance of the appeal was raised by written motion and ruled on before trial; or (3) state that the trial court granted permission to appeal. TEX. R. APP. P. 25.2(b)(3). The rule does not mean, however, that an appellate court's jurisdiction is properly invoked by the filing of a specific notice of appeal complying only in form with the extra-notice requirements of Rule 25.2(b)(3). *Betz v. State*, 36 S.W.3d 227, 228 (Tex. App.—Houston [14th Dist.] 2001, no pet.); *Sherman v. State*, 12 S.W.3d 489, 492 (Tex. App.—Dallas 1999, no pet.). An appellant must, in good faith, comply in both form and substance with the extra-notice requirements of the rule. *Id.* Not only must the specific notice of appeal recite the applicable extra-notice requirements, the record must substantiate the recitations in the notice of appeal and the issues raised in the brief must relate to the specific claims in the notice of appeal. *See Betz*, 36 S.W.3d at 228-29; *Sherman*, 12 S.W.3d at 492. Noncompliance, in either form or substance, results in a failure to properly invoke the appellate court's jurisdiction over an appeal to which Rule 25.2(b)(3) is applicable. *Id.*

Appellant's notice of appeal failed to invoke this Court's jurisdiction. The notice of appeal states, in pertinent part: "Defendant appeals based upon a jurisdictional defect." While this language complies with the form requirements of Rule 25.2(b)(3), appellant's brief does not raise issues involving a jurisdictional defect. The only issue raised by

appellant in the brief concerns the denial of his motion for continuance. Therefore, we are without jurisdiction to consider appellant's issue.

Moreover, given the plain meaning of Article 42.12, section 5(b) of the Code of Criminal Procedure, 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. *Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999); TEX. CODE CRIM. PROC. ANN. Art. 42.12 § 5(b) (Vernon Supp. 2001). Appellant may only raise issues that occur after adjudication of guilt and assessment of punishment. *See Ditto v. State*, 988 S.W.2d 236, 238 (Tex. Crim. App. 1999). Nor may we now consider any complaint concerning the original plea because those had to have been raised when deferred adjudication community supervision was first imposed. *Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999).

Accordingly, we dismiss the appeal for want of jurisdiction.

PER CURIAM

Judgment rendered and Opinion filed August 23, 2001.

Panel consists of Chief Justice Brister, Justices Hudson and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).