Affirmed and Opinion filed August 24, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00422-CR

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JOHN JOSEPH O'CONNOR, III, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 240th District Court
Fort Bend County, Texas
Trial Court Cause No. 28,153

O P I N I O N

Appellant, John Joseph O'Connor, III, pled guilty to the offense of theft. The trial court deferred adjudication of guilt and placed appellant on community supervision for a period of three years. Thereafter, the State filed a motion to adjudicate guilt. The trial court granted the motion, finding appellant violated several terms of his community supervision. The court then sentenced appellant to twelve months in a state jail facility. On appeal, appellant contends his sentence is void, his due process rights were violated, and the visiting judge's decision should have been reviewed by the presiding judge. We affirm the trial court's judgment.

In his first point of error, appellant claims the trial court erred in sentencing him to twelve months imprisonment for a state jail felony. He contends the law in effect on May 21, 1996, the day he committed the offense, provided for mandatory community supervision upon conviction of a state jail felony.[1]

The Code of Criminal Procedure provides specific forms of community supervision for various circumstances and offenses – such as regular, *deferred adjudication*, state boot camp, shock, DWI, bias or prejudice offenses, sexual offenses against children, violent offenses, family violence offenses, substance abuse offenses, *state jail felony*, and disorderly conduct and public intoxication offenses. *See generally* TEX. CODE CRIM. PROC. ANN. art. 42.12 §§ 3, 4, 5, 8, 12, 13, 13A, 13B, 13D, 14, 15, 15A (Vernon Supp. 2000). Each type of community supervision has its own limitations and requirements and is independent of the other forms. *See Rodriguez v. State*, 939 S.W.2d 211, 220-21 (Tex. App.—Austin 1997, no pet.).

Here, appellant was placed on *deferred adjudication* community supervision pursuant to article 42.12 § 5(a). The rules and requirements of deferred adjudication community supervision are distinct and separate from those applying to state jail felony community supervision. *Compare* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5 (Vernon Supp. 1996) *with* art. 42.12 § 15 (Vernon Supp. 1996). Because appellant was originally placed on deferred adjudication community supervision, we will apply the rules in section 5 applicable to deferred adjudication community supervision. Section 5(b) provides the consequences for

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[1] Appellant cites Act of May 28, 1995, 74th Leg., R.S., Ch. 318, § 60(b), 1995 Tex. Gen. Laws 2734, 2754; TEX. CODE CRIM. PROC. ANN. art. 42.12 § 15(b) (Vernon Supp. 1996), which provides for the minimum and maximum period of community supervision a judge may impose as punishment for a state jail felony. It is likely that appellant meant to refer to article 42.12 § 15(a), which is consonant with his argument. Article 42.12 § 15(a) required the judge to impose community supervision upon a defendant who was convicted of a state jail felony and who had no prior felony convictions. *See* Act of May 28, 1995, 74th Leg., R.S., Ch. 318, § 60(a), 1995 Tex. Gen. Laws 2734, 2754; TEX. CODE CRIM. PROC. ANN. art. 42.12 § 15(b) (Vernon Supp. 1996). Section 15(a), however, has since been amended to make imposition of sentence an option in all cases, but this amendment applies only to offenses committed on or after its effective date. *See* Act of May 17, 1997, 75th Leg., R.S., ch. 488, §§ 1, 6, 1997 Tex. Gen. Laws 1812; TEX. CODE CRIM. PROC. ANN. art. 42.12 § 15(a) (Vernon Supp. 2000).

violating a condition of deferred adjudication community supervision.[2] Under section 5(b), a judge *may* either suspend or execute the sentence of a defendant who has violated a condition of his deferred adjudication community supervision. Thus, the judge had discretion to either place defendant on state jail felony community supervision or impose a sentence. Thus, we find the trial court did not err in imposing a twelve month sentence. Appellant's first point of error is overruled.

In his second and third points of error, appellant contends the trial court violated his due process rights by denying him a hearing on his motion to inspect evidence. He claims this deprived him the right to "confront" evidence against him.

Appellant's guilt was adjudicated, in part, because he violated a condition of community supervision requiring him to avoid the use of dangerous drugs and controlled substances. At a hearing on the State's motion to adjudicate, the State introduced evidence that a sample of appellant's urine had tested positive for cocaine. Prior to the adjudication hearing, appellant filed a motion to inspect and independently test the urine sample. The trial court denied appellant a hearing on his motion and denied him the right to inspect and test the sample.

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[2] Article 42.12 § 5(b) in effect at the time appellant committed the offense provided:

> On violation of a condition of community supervision imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 21 of this article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and defendant's appeal continue as if the adjudication of guilt had not been deferred. *A court assessing punishment after an adjudication of guilt of a defendant charged with a state jail felony may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed, regardless of whether the defendant has previously been convicted of a felony*.

(Emphasis added).

Article 42.12 § 5(b) of the Code of Criminal Procedure governs the revocation of deferred adjudication supervision. *See* footnote 2, *supra*. Section 5(b) provides that "[t]he defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge" and that "[n]o appeal may be taken from this determination." *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5(b) (Vernon Supp. 1996). Because section 5(b) specifically provides that appellant's right to a hearing is limited to determination of adjudication and that no appeal may be taken, we are without jurisdiction to entertain or consider appellant's complaint. *See Phynes v. State*, 828 S.W.2d 1, 2 (Tex. Crim. App. 1992); *Jarour v. State*, 923 S.W.2d 174, 174-75 (Tex. App.—Fort Worth 1996, no pet.) (dismissing appeal from adjudication hearing where appellant claimed he was denied the right to confront the witnesses against him due to the trial court's failure to appoint an interpreter). Because we have no jurisdiction, we do not address appellant's second and third points of error.

In his fourth point of error, appellant asserts the regularly elected or appointed judge of the district court should be required to review the decision of a visiting judge when requested. Here, the State's motion to adjudicate was heard by a visiting judge. Appellant contends his right to equal protection was violated when the regular judge refused to review the actions of the visiting judge.

Appellant's case was assigned by Judge Thomas Culver to Judge Bradley Smith who was, at that time, presiding over Impact Court One, District Court, Fort Bend County. Judge Smith presided over the adjudication hearing without objection. After his guilt had been adjudicated by Judge Smith, appellant filed a motion for rehearing by the presiding judge.

Qualified judges possess all the powers of the court to which they are assigned, regardless of whether the regular judge is simultaneously presiding. *See Borders v. State*, 822 S.W.2d 661, 663 (Tex. App.—Dallas 1991), *rev'd on other grounds*, 846 S.W.2d 834 (Tex. Crim. App. 1992) (citing *Herrod v. State*, 650 S.W.2d 814, 817 (Tex. Crim. App. 1983); TEX. GOV'T CODE ANN. § 74.059(a) (Vernon 1988)). Moreover, any possible impropriety here has

been waived. *See* TEX. R. APP. P. 33.1(a)(1); *Rodasti v. State*, 749 S.W.2d 161, 163 (Tex. App.—Houston [1st Dist.] 1988), *rev'd on other grounds*, 786 S.W.2d 294 (Tex. Crim. App. 1989), *withdrawn* 790 S.W.2d 379 (Tex. App.—Houston [1st Dist.] 1990), *vacated and remanded*, 815 S.W.2d 591 (Tex. Crim. App. 1991) (failure to make timely objection to the visiting judge's authority to hear a case waived any complaint on appeal) (citing *Bonilla v. State*, 740 S.W.2d 583, 588 (Tex. App.—Houston [1st Dist.] 1987, pet. ref'd).

Finally, appellant has not properly briefed the point of error. His skeletal argument, consisting of four sentences, is unsupported by the citation of any authority. *See* TEX. R. APP. P. 38.1(h). Appellant's fourth point of error is overruled.

The judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed August 24, 2000.
Panel consists of Justices Hudson, Fowler, and Edelman.
Do Not Publish — TEX. R. APP. P. 47.3(b).