

Affirmed and Opinion filed September 9, 1999.



In The
Fourteenth Court of Appeals

NO. 14-98-00192-CR

DEWAYNE EDDIE POLK, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause No. 751196**

OPINION

DeWayne Eddie Polk entered a plea of guilty to the offense of aggravated robbery. The court found him guilty and assessed his punishment at eighteen years confinement. In a single point of error, appellant claims the trial court erred when it failed to admonish him in compliance with article 26.13 of the Texas Code of Criminal Procedure. We affirm.

The record indicates that on July 30, 1997, appellant entered a plea of guilty to the offense of robbery, enhanced with one prior conviction. The admonishments signed by

appellant, the State, and the court indicated that the charge of aggravated robbery was reduced to robbery. The court found the evidence substantiated guilt, deferred a finding of guilt, and reset the case pending a presentence investigation. After receipt of the presentence investigation, appellant requested to withdraw his guilty plea. The court allowed him to withdraw his plea on September 30, 1997.

The case went to trial on January 13, 1998, on the charge of aggravated robbery as set out in the indictment. During the trial, appellant decided to enter a plea of guilty, with no agreed punishment recommendation. Appellant signed another set of admonishments, which indicated that appellant was charged with the offense of aggravated assault instead of aggravated robbery. The admonishment form was signed by appellant and approved by the State and the trial court. Appellant initialed each admonishment, among which was the correct range of punishment for aggravated robbery as follows:

FIRST DEGREE FELONY: a term of life or any term of not more than 99 years or less than 5 years in the Institutional Division of the Texas Department of Criminal Justice, and in addition, a fine not to exceed \$10,000.00 may be assessed.

When appellant entered the first guilty plea on January 13, 1998, the trial court stated that he found him guilty of the offense of aggravated robbery and assessed his punishment at eighteen years confinement. The court asked if appellant had any objections. Appellant made no objection. The court accepted appellant's plea, but later allowed him to withdraw his guilty plea.

After accepting appellant's plea of guilty, the court found appellant guilty of aggravated robbery and assessed punishment at eighteen years confinement. The court made an affirmative finding of a deadly weapon.

In a single point of error, appellant claims the trial court erred when it failed to admonish him in compliance with article 26.13 of the Texas Code of Criminal Procedure. More specifically, appellant asserts that he entered a plea of guilty to the offense of aggravated assault because that was the offense listed on the admonishments he initialed and signed on January 13, 1998. The record demonstrates, however, that appellant plead guilty to the offense of aggravated robbery, and the court specifically found him guilty of aggravated robbery. Further, appellant made no objection at his plea hearing. It is true that the admonishments incorrectly designated the offense as aggravated assault, which is a second degree felony, instead of the offense of aggravated robbery, which is a first degree felony. TEX. PENAL CODE ANN. §§ 22.02 & 29.03. The admonishments, however, correctly set out the range of punishment for a first degree felony. Therefore, the trial court's admonishments attained a level of substantial compliance with article 26.13. *See Johnson v. State*, 712 S.W.2d 566, 568 (Tex. App.—Houston [1st Dist.] 1986, no pet.).

A finding that a defendant was duly admonished creates a prima facie showing that a guilty plea was entered knowingly and voluntarily. *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998). A defendant may still raise the claim that his plea was not voluntary; however, the burden shifts to the defendant to demonstrate that he did not fully understand the consequences of his plea such that he suffered harm. *Id.* Appellant has failed to meet his burden to demonstrate that his plea was involuntary.

Appellant was well aware of the offense for which he was charged and proceeded to trial on the offense of aggravated robbery. During the trial, he decided to enter a plea of guilty to the offense as charged without an agreed punishment recommendation. The court found appellant guilty of the offense of aggravated robbery and asked if appellant had anything to say. Neither appellant, nor his attorney made any objections. The record does not demonstrate that appellant was harmed or misled by the clerical error in the trial court's written admonishments. Appellant's point of error is overruled.

The judgment of the trial court is affirmed.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed September 9, 1999.

Panel consists of Justices Wittig, Frost, and Hutson-Dunn.¹

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

¹ Senior Justice D. Camille Hutson-Dunn sitting by assignment.