Affirmed as Reformed and Opinion filed October 7, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00249-CR

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STEVE MARK CONWELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 616,867

O P I N I O N

Appellant was charged by indictment with the offense of kidnapping. Upon the State's recommendation, the trial court accepted appellant's plea of guilty to the charged offense, found sufficient evidence to substantiate appellant's guilt but withheld an adjudication of guilt, and placed appellant on community supervision for a period of ten years. The State later filed a motion to adjudicate guilt. Following a hearing on the State's motion, the trial court adjudicated appellant's guilt, revoked his community supervision and assessed punishment at 20 years confinement in the Texas Department of Criminal Justice—Institutional Division.

In his sole point of error, appellant contends the 20 year sentence was illegal as the offense of kidnapping is a third degree felony. The State agrees that the punishment imposed was illegal. The indictment alleges the offense of kidnapping under Texas Penal Code Section 20.03. That offense is a felony of the third degree. TEX. PEN. CODE ANN. § 20.03(c). The range of punishment for a third degree felony is confinement for not more than ten or less than two years; additionally a fine not to exceed $10,000 may be imposed. TEX. PEN. CODE ANN. § 12.34. Consequently, we hold the sentence of 20 years was unlawful.

The question is the appropriate remedy. Appellant requests we remand the case to the trial court for re-sentencing. The State, however, requests that the judgment be reformed to reflect the maximum term of confinement for a third degree felony. In support of its request, the State relies upon Texas Rule of Appellate Procedure 43.2(b) and *McCray v. State*, 876 S.W.2d 214 (Tex. App.—Beaumont 1994, no. pet). We are persuaded by the State's authority.

Rule 43.2(b) authorizes the courts of appeals to "modify the trial court's judgment and affirm it as modified." Additionally, *McCray* is directly on point. The defendant was charged with the third degree felony offense of kidnapping and placed on deferred adjudication probation. The probation was later revoked and punishment was assessed at 20 years confinement. The court of appeals, relying on former rule 80 of the Rules of Appellate Procedure and *Bigley v. State*, 865 S.W.2d 26 (Tex. Crim. App.1993), affirmed the judgment of the trial court as to the conviction of appellant for the offense of kidnapping, but reformed the sentence to ten years confinement. *See McCray*, 876 S.W.2d at 216-17. *See also Hollie v. State*, 962 S.W.2d 302, 304 (Tex. App.—Houston [1st Dist.] 1998), *pet. dism'd as improvidently granted*, 984 S.W.2d 263 (Tex. Crim. App. 1999) (judgment reformed to reduce confinement from 45 days to the maximum confinement of 30 days in the county jail as a condition of probation.).

In light of this authority, we affirm the judgment of the trial court as to the conviction of appellant for the offense of "Kidnapping," but order that said judgment be reformed by changing the listed degree to "Third" and reform the punishment imposed to "10 years" confinement in the Texas Department of Criminal Justice—Institutional Division.

/s/ Charles Baird
Justice

Judgment rendered and Opinion filed October 7, 1999.

Panel consists of Justices Amidei, Wittig, and Baird.[1]

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

[1] Former Judge Charles F. Baird sitting by assignment