

Affirmed and Opinion filed October 7, 1999.



In The

Fourteenth Court of Appeals

NO. 14-98-00534-CR

JAMES ELMER ALSTON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 230th Judicial District Court
Harris County, Texas
Trial Court Cause No. 727,121**

OPINION

James Elmer Alston pleaded *nolo contendere* to a charge of sexual assault of a child. After a pre-sentence investigation, the trial court sentenced him to ten years in prison. *See* TEX. PEN. CODE ANN. § 22.011(a)(2)(A) (Vernon Supp. 1999). In two points of error Alston contests the sufficiency of the evidence to support his plea of no contest. We affirm.

SUFFICIENCY AND THE PLEA

Alston's basic contention is that the state's evidence, introduced at the time of his plea, is insufficient to support his conviction. *See* TEX. CODE CRIM. PROC. ANN. art. 1.15 (Vernon Supp. 1999).

At a January 1998 hearing, the State introduced a "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession" form and a standard admonishments form. On the waiver form, Alston marked through "Judicial Confession" in the document's title. After reciting that the defendant waived his rights to trial by jury, to confront witnesses and right against self-incrimination, the document added the language of the indictment. Alston altered the preprinted portions of the document with interlineations and additions, so that the pertinent language read:

WAIVER OF CONSTITUTIONAL RIGHTS, AGREEMENT TO STIPULATE, AND JUDICIAL CONFESION

In open court and prior to entering my plea, I waive the right of trial by jury. I also waive the appearance, confrontation, and cross-examination of witnesses, and my right against self-incrimination. The charges against me allege that in Harris County, Texas, JAMES ELMER ALSTON, hereinafter styled the Defendant, on or about JUNE 22, 1996, did then and there unlawfully, intentionally, and knowingly cause the penetration of the female sexual organ of Jami Camp, hereinafter called Complainant, a person younger than seventeen years of age and not his spouse by placing his sexual organ in the female sexual organ of the Complainant.

I understand the above allegations and I ~~confess~~ stipulate that the state's witnesses will testify truthfully that they are true and that the acts alleged above were committed on June 22, 1996.

Alston also struck out the word "guilty" wherever it appeared in the document and substituted "no contest." Likewise, on the admonishments form Alston struck through language indicating that he "committed each and every element alleged" in the indictment, substituting language that "if the state's witnesses were sworn in and testified" they would testify that he had committed every element of the offense alleged.

The court of criminal appeals has held that a defendant pleading *nolo contendere* need not stipulate to the truth of the proffered evidence to support conviction, any more than a defendant

at trial needs to concede the truth of the charges against him to authorize conviction. *Stone v. State*, 919 S.W.2d 424, 427 (Tex. Crim. App. 1996). The test is whether the stipulated evidence embraces every element of the offense charged, and is sufficient to establish the defendant's guilt. *Id.* at 426-427.

Alston argues these documents do not contain a stipulation that he committed the offense with which he is charged. Alston's argument is too clever. Although he was careful not to admit guilt, he did stipulate that the witnesses against him would "testify truthfully that [the allegations against him] are true . . ." By stipulating to the truth of the witnesses' testimony, Alston has unwittingly promulgated a judicial confession. *See id.* at 426 (citing *Waage v. State*, 456 S.W.2d 388, 389 (Tex. Crim. App. 1970)). And "[i]t is well settled that a judicial confession, *standing alone*, is sufficient to sustain a conviction upon a guilty plea, and to satisfy the requirements of Article 1.15, V.A.C.C.P." *Dinnery v. State*, 592 S.W.2d 343, 353 (Tex. Crim. App. 1980) (on reh'g en banc) (emphasis in original) (citations omitted).

CONCLUSION

Alston's stipulations were sufficient to satisfy the requirements of TEX. CODE CRIM. PROC. ANN. art. 1.15 (Vernon 1977). The trial court therefore did not err in convicting him on his plea of *nolo contendere*. The judgment of the trial court is AFFIRMED.

Ross A. Sears
Justice

Judgment rendered and Opinion filed October 7, 1999.

Panel consists of Justices Sears, Cannon, and Lee.¹

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

¹ Senior Justices Ross A. Sears, Bill Cannon, and Norman Lee sitting by assignment.