Affirmed and Opinion filed October 14, 1999.

In The

Fourteenth Court of Appeals

NO. 14-97-00292-CR

SANCHEZ MADOX, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause No. 616,627

O P I N I O N

Appellant was charged with the felony offense of carrying a weapon on the premises of an educational institution. He pleaded guilty and was placed on deferred adjudication. A motion to adjudicate was subsequently filed, alleging appellant violated the terms of his probation. The court adjudicated his guilt and assessed punishment at five years' confinement. We affirm.

Appellant presents seven issues, the majority of which contain further or different issues within his brief.

Under his first issue, appellant argues that the order of deferred adjudication is void because it was not signed; that it is invalid because the docket sheet shows the court actually found appellant guilty, and that it fails to conform to various sections of TEX. CODE CRIM. PROC. ANN. Art. 42.01 (Vernon 1979). He further argues that as the adjudication was five years after the original deferral, it violates the requirement that a judgment be rendered and entered during the same term. Lastly, he argues that the court failed to set a pre-sentence investigation, and that the judge hearing the motion to adjudicate could not sentence appellant to confinement as the judge granting him deferred adjudication five year's earlier had placed him on probation.

These arguments are without merit and are overruled. A supplemental transcript has been filed, and the entire order of deferred adjudication is before us. We find it was duly signed and conforms to all necessary requirements. The record contains a waiver of pre-sentence investigation, signed by appellant and accepted by the court. There is no requirement that an order of deferred adjudication and order adjudicating guilt be signed by the same judge or within the same term. Lastly, we do not agree with appellant's interpretation of the docket sheet, and find it reflects the court as having made "no finding of guilt" and placing appellant on deferred adjudication. Regardless, the order of deferred adjudication clearly defers a finding of guilt.

By his second issue, appellant alleges that his guilty plea regarding use of cocaine, the basis for the adjudication hearing, was involuntary as he was unaware that use of cocaine would violate his probation terms. There is nothing in the record to support this allegation, and the issue is overruled. TEX. R. APP. P. 38.1(h). Regardless, we note that the conditions of probation signed by appellant in the record clearly stated that he was not to use or have any controlled substances.

Under his third and fourth issues, appellant argues that if there is a valid order deferring adjudication in the record, then the deferred adjudication process under TEX. CODE CRIM. PROC. ANN. art. 42.12(5)(a) is unconstitutional as it punishes defendants prior to an adjudication of guilt or a conviction. Appellant's argument has been rejected by this Court. *Tackett v. State*, 989 S.W.2d 855 (Tex. App. – Houston [14th Dist.] 1999, pet. ref'd). Appellant's third and fourth issues are overruled.

Appellant presents the novel contention under issue number five that deferred adjudication probation is a form of slavery. Appellant argues that as he was required to work for free under a "community-service work program," he became a slave of the State. Appellant fails to brief this issue or cite any supportive authority, and his fifth issue is overruled. TEX. R. APP. P. 38.1(h).

We overrule appellant's related seventh issue, which requests this Court to abate the appeal and hold an evidentiary hearing as to events not in the record amounting to slavery. Appellant did not brief his argument regarding slavery, and has not demonstrated good cause for this court to suspend the rules of appellate procedure and abate this cause for an evidentiary hearing. TEX. R. APP. P. 2 and 43.6; *Torres v. State*, 804 S.W.2d 918, 920 (Tex. App.–El Paso 1990, pet. ref'd) (opinion on rehearing).

Finally, appellant's sixth issue requests us to abate the appeal and order an evidentiary hearing as to the voluntariness of appellant's plea of guilty to the use of cocaine. As grounds, appellant attaches to his brief medical records and an affidavit stating that appellant had surgery for removal of a brain tumor two weeks after he pleaded guilty to the cocaine charge. These items apparently were not presented to the trial court and are not in the record. Appellant complains the trial court failed to hold an evidentiary hearing on his motion for new trial regarding these allegations.

The right to a hearing on a motion is not an absolute right. *Reyes v. State*, 849 S.W.2d 812, 815 (Tex. Crim. App. 1993). We review a trial court's decision not to set a hearing under an abuse of discretion standard. *Id*. As a prerequisite to a hearing, and as a matter of pleading, motions for new trial must be supported by an affidavit of either the accused or someone else specifically showing the truth of the grounds asserted. *Jordan v. State*, 883 S.W.2d 664, 665 (Tex. Crim. App. 1994); *Reyes*, 849 S.W.2d at 816. If the defendant's motion and affidavit are sufficient, a hearing on the motion is mandatory. *Reyes*, 849 S.W.2d at 816. We must determine whether the affidavit shows reasonable grounds that would entitle the defendant to a hearing on the motion. *Jordan*, 883 S.W.2d at 665. A motion for new trial must be sufficient to put the trial judge on notice that reasonable grounds exist to believe a new trial is warranted. *Sandoval v. State*, 929 S.W.2d 34, 36 (Tex. App. – Corpus Christi 1996, pet. ref'd).

After a review of the clerk's record, we find that the motion for new trial, sworn to by appellant's counsel on appeal, was insufficient to require an evidentiary hearing. Appellant's sole contention was that

a brain tumor had rendered him unable to effectively assist in his defense at the motion to adjudicate. Appellant's motion was conclusory in nature. *Jordan*, 883 S.W.2d at 665. While it may well be true that appellant had a brain tumor, the motion for new trial did not contain any affidavits from appellant or his physicians attesting to his medical condition or any impairment existing at the time of the plea. Nothing appears in the record to substantiate these allegations, and no abuse of discretion has been shown.

The judgment is affirmed.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed October 14, 1999.

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

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

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