

Affirmed and Opinion filed October 25, 2001.



In The

Fourteenth Court of Appeals

NOS. 14-00-01031-CR & 14-00-01032-CR

REYNALDO SANCHEZ ANCIRA, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause Nos. 802,002 & 839,697**

OPINION

Appellant, Reynaldo Sanchez Ancira, was charged by indictment in cause number 802,002 with the offense of murder. He was separately indicted in cause number 839,697 for the offense of aggravated robbery. Appellant entered a plea of guilty in both cases without the benefit of plea agreement. Thereafter, the trial court assessed appellant's punishment at confinement in the state penitentiary for a term of 30 years for the murder and 20 years for the aggravated robbery. In a single point of error, appellant contends the plea papers are defective in both cases because he did not initial some of the written admonishments. We affirm.

Recently, the Court of Criminal Appeals overruled the *Helms* Rule.¹ *Young v. State*, 8 S.W.3d 656, 666 (Tex. Crim. App. 2000). As a result, a *valid* plea of guilty “waives’ or forfeits the right to appeal a claim of error only when the judgment of guilt was rendered independent of, and is not supported by, the error.” *Id.* at 667. We are unsure what, if any, errors may still be waived by a guilty plea. However, because the plea must first be “valid,” we presume this court has jurisdiction to consider the issue asserted by appellant.

Prior to appellant’s plea, he was given written admonishments that contained the following instruction:

Pursuant to Article 26.13(d), Code of Criminal Procedure, the Court admonishes you the Defendant as follows and instructs you to place your initials by each item if you fully understand it:

A series of specific legal admonishments follow the aforementioned instruction. Appellant initialed many of the admonishments, but not all. The admonishments that were not initialed by appellant include the following:

- (2) the recommendation, if any, of the prosecuting attorney as to punishment is not binding on the Court;
- (3) if there is any plea bargain agreement between the State and you, the Court will inform you in open court whether it will follow such agreement before making any finding on your plea;
- (4) the Court will permit you to withdraw your plea of guilty or nolo contendere should it reject any plea bargain agreement;
- (5) if the punishment assessed by the Court does not exceed the punishment recommended by the prosecutor and agreed to by you and your attorney, the Court must give its permission to you before you may prosecute an appeal on any matter in this case except for those matters raised by you by written motion filed prior to trial;

The document also contained several specific “statements and waivers of defendant.” The waivers not initialed by appellant include the following:

¹ *Helms v. State*, 484 S.W.2d 925, 927 (Tex. Crim. App. 1972).

(3) I hereby WAIVE the right to have the trial court orally admonish me;

(4) I hereby WAIVE the right to have a court reporter record my plea;

(5) I represent to the trial court that the State will make the plea bargain agreement or recommendation, if any, set forth in the Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession herein and I understand the consequences, as set out above, should the trial court accept or refuse to accept the plea bargain or plea without an agreed recommendation.

(6) I understand that before sentence may be imposed, the Court must order preparation of a Presentence Investigation Report by the probation officer pursuant to Article 42.12, Sec. 9, V.A.C.C.P. I have thoroughly discussed this matter with my attorney and believe that for the Court to compel me to participate in the preparation of such a report would abridge the protection provided me by the Constitution of the United States and the Constitution and laws of the State of Texas and could result in further prejudice to me. Therefore, I hereby in writing respectfully decline to participate in the preparation of the Presentence Investigation Report and request that said report not be made prior to the imposition of sentence herein. I further knowingly, voluntarily, and intelligently waive any right which I may have to the preparation of said report either under Article 432.12, Sec. 9, V.A.C.C.P. or under Article 42.09, Sec. 8(a)(10), V.A.C.C.P.;

* * *

(8) I further understand that if I was under 21 years of age at the time I committed the offense of driving while intoxicated, or an offense involving the manufacture, delivery, possession, transportation or use of an alcoholic beverage, or the manufacture, delivery, possession, transportation or use of a controlled substance, dangerous drug or simulated controlled substance that my Texas driver's license or my privilege to obtain a Texas driver's license and a driver's license in any other state will be automatically suspended for one (1) year from the date sentence is imposed or suspended in open court and that my driver's license suspension shall remain in effect until I attend and successfully complete an alcohol education program in this state. And, if I am over 21 years of age and I receive a

final conviction or suspended sentence for driving while intoxicated, or for violating the Controlled Substances Act, or a drug offense, my Texas driver's license will be suspended, and will remain suspended until I successfully attend and complete a drug or alcohol education program as prescribed by law, report the successful completion to the Court in which I was convicted, and the Texas Department of Public Safety receives notice of the completion. I also understand that I may be eligible to receive a restricted license from the court during this period of suspensions.

(9) I understand that if I am convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under Chapter 62 of the Texas Code of Criminal Procedure, I will be required to meet the registration requirements as set forth in that chapter.

(10) I represent to the trial court that if I am pleading guilty or nolo contendere to an offense for which a person is subject to registration under Chapter 62 of the Texas Code of Criminal Procedure, my attorney has advised me of the registration requirements as set forth in that chapter.

Appellant suggests that because he did not initial the aforementioned admonishments and waivers, we must presume he was not properly admonished and did not make the appropriate waivers. To the contrary, appellate courts apply a presumption of regularity of proceedings and presume that recitals in court documents are correct unless the record affirmatively shows otherwise. *Moussazadeh v. State*, 962 S.W.2d 261, 264 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd). Here, the trial court's judgment asserts appellant "was admonished by the Court as required by law." The court's docket sheet also states that appellant was "admonished by the Court of the consequences of said plea." Moreover, the docket sheet reflects the plea proceedings were recorded by Linda Hacker, the court reporter; yet, appellant has not brought forward a record of the plea proceeding. Thus, we cannot presume, as appellant requests, that he neither waived his rights nor was properly admonished prior to the plea.

Finally, even if appellant did not receive oral admonishments from the trial court, the error, if any, was harmless. *Matchett v. State*, 941 S.W.2d 922, 929 (Tex. Crim. App. 1996). All of the admonitions not initialed by appellant relate to a plea bargain agreement. Because appellant entered his plea without a plea bargain agreement, these admonishments were not pertinent.

With regard to the absence of waivers, the record indicates appellant was orally admonished and that a court reporter was present. The remaining statements and waivers are not pertinent because they relate either to (1) alcohol or drug related traffic offenses; (2) sex offenses; or (3) the waiver of a presentence investigation. Here, the offenses were murder and aggravated robbery and the court ordered a presentence investigation in each case.

Accordingly, appellant's sole point of error is overruled.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed October 25, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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