Dismissed For Want of Jurisdiction and Opinion filed November 30, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00848-CR
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MICHAEL JOSEPH SIEMER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause Nos. 94-20151 and 94-20142

M E M O R A N D U M O P I N I O N

Appellant entered a plea of guilty to the felony offenses of sexual assault of a child and indecency with a child. The court accepted appellant's pleas to each offense, found the evidence sufficient to substantiate guilt, deferred a finding of guilt and placed appellant on ten years community supervision for each cause, and fined appellant $750. Later, the State moved to adjudicate appellant's guilt on each offense. The trial court revoked appellant's community supervision, adjudicated appellant's guilt on both offenses, and assessed punishment at twenty years confinement for each cause, in the Institutional Division of the Texas Department of Criminal Justice.

In four points of error, appellant contends that the probation condition prohibiting contact with anyone under twenty-one is invalid; the condition prohibiting unsupervised contact with any minor under twenty-one is unconstitutionally vague, permitting discriminatory enforcement; the trial court failed to properly admonish appellant of the consequences of his guilty plea; and his plea was not knowing and voluntary. In his reply brief appellant abandoned his first point of error. We dismiss for lack of jurisdiction.

I. Original Plea Proceeding

On May 10, 1995, appellant entered a non-negotiated plea of guilty to the offenses of sexual assault of a child and indecency with a child. Appellant was placed on ten years deferred adjudication on each offense. Original conditions of community supervision were imposed on May 10, 1995. Those original conditions applicable to each cause number were amended on August 4, 1995. On August 11, 1998, the trial court supplemented the August 4 conditions with additional conditions set out in a document entitled "Attachment A."

On May 20, 1999, the State filed motions to adjudicate guilt. The State's motion was based on appellant's violations of one of the conditions contained in the August 11, 1998 supplemental conditions. That condition specified that appellant was not to have unsupervised contact with any minor under the age of twenty-one.[1] After a hearing on June 14 and 15, 1999, the trial court found appellant violated the conditions of his probation and adjudicated his guilt, sentencing appellant to twenty years confinement.

II. Analysis

A. Condition of Probation is Unconstitutionally Vague

The record before this court is clear that probation condition number eight on Attachment A was added more than four years after the trial court first imposed deferred adjudication in 1995. Trial courts have the authority to alter or modify the conditions of community supervision during the period of such supervision. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 11(a) (Vernon Supp. 2000). The Court of Criminal Appeals has held that modification of regular probation conditions is not appealable. *See*

[1] The condition challenged by appellant in point of error two is designated number eight on Attachment A.

Basaldua v. State, 558 S.W.2d 2, 5 (Tex. Crim. App. 1977) (holding neither constitutional nor statutory authority confers jurisdiction to hear an appeal for an order entered pursuant to Article 42.12 altering or modifying probationary conditions). The same rule has been applied to deferred adjudication probation. Specifically, appellate courts do not have jurisdiction to hear appeals from the modification of the terms of deferred adjudication because such appeals have not been authorized by the legislature. *See Quaglia v. State*, 906 S.W.2d 112, 113 (Tex. App.—San Antonio 1995, no pet.); *see also Eaden v. State*, 901 S.W.2d 535, 537 (Tex. App.—El Paso 1995, no pet.) (citing *Basaldua* for proposition that an appellate court does not have jurisdiction to entertain an appeal from an order of the trial court modifying the terms of deferred adjudication probation). Accordingly, we are without jurisdiction to address issues regarding the modification of the conditions of appellant's deferred adjudication community supervision.

B. Trial Court Failed to Properly Admonish Appellant as to Consequences of Plea

In 1999, the Texas Court of Criminal Appeals interpreted Article 44.01(j) of the Texas Code of Criminal Procedure as extending a rule formerly only applicable to regular community supervision to the deferred adjudication context. *See Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999). The rule for regular community supervision is that a defendant placed under such supervision may raise issues relating to the conviction, such as evidentiary sufficiency, only in appeals taken when community supervision is first imposed. *See id.* at 661. The *Manuel* Court holds this rule also applies to deferred adjudication community supervision. *Id.* Thus, a defendant placed on deferred adjudication community supervision may raise issues related to the original plea proceeding, such as evidentiary sufficiency, only in appeals taken when deferred adjudication is first imposed. *Id.* at 661-662. The *Manuel* Court held it was not the Legislature's intent in enacting Article 44.01(j) to permit two reviews of the legality of the deferred adjudication order: one when deferred adjudication is first imposed, and another when and if it is later revoked. *Id.* at 662. Thus, in *Manuel*, because the defendant pleaded guilty and received deferred adjudication community supervision in 1993, and failed to appeal an alleged error occurring at the time of his guilty plea until after his community supervision was revoked in 1997, his appeal was untimely. *Id.* at 660.

Here, appellant pleaded guilty in 1995 and was admonished at the time of his plea. Appellant could have directly appealed errors occurring in the plea proceeding. Appellant's general notice of appeal was filed on July 2, 1999. Where, as here, a defendant enters a non-negotiated plea and receives deferred adjudication community supervision, he can file a general notice of appeal pursuant to appellate procedure rule 25.2(a) within thirty cays of the order deferring adjudication. *See Kirk v. State*, 942 S.W.2d 624, 625 (Tex. Crim. App.1997) (holding restrictions on negotiated pleas do not apply to deferred adjudicators who enter plea of guilty or nolo contendere without a plea bargain). Because appellant failed to appeal the issue of improper admonishments at the time of the original plea proceeding, we are without jurisdiction to address the complaint now.

C. Plea Was Not Knowingly and Voluntarily Made

The rule articulated in *Manuel* also applies to complaints, as appellant raises here, that his plea was involuntary. *See Hanson v. State,* 11 S.W.3d 285, 288 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). The *Hanson* court held that appellant could have appealed the order placing him on deferred adjudication and could have raised the voluntariness of his plea following his original plea hearing. *See id*. However, based on the holding in *Manuel*, his failure to do so prevented this court from addressing the merits of his complaint. *See id*. As with appellant's other points of error, this court is without jurisdiction to address this complaint at this late date.

III. Conclusion

For the reasons set forth above, this court is without jurisdiction to address appellant's points of error two, three and four. Accordingly, the appeal is dismissed for lack of jurisdiction.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed November 30, 2000.

Panel consists of Justices Anderson, Fowler, and Edelman.

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