

Affirmed and Opinion filed December 16, 1999.



In The

Fourteenth Court of Appeals

NO. 14-98-00466-CR

RONALD JOSEPH GUIDRY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. No. 763,556**

OPINION

Ronald Joseph Guidry pleaded guilty to solicitation of capital murder of his wife, Joycelyn Guidry. A jury assessed punishment at ten years' confinement. Guidry now appeals that his guilty plea was involuntary because the trial court failed to properly admonish him under the Fifth and Sixth Amendments to the U.S. Constitution and under article 26.13 of the Texas Code of Criminal Procedure. We affirm.

FIFTH AND SIXTH AMENDMENTS

In his first point of error, Guidry appeals that his guilty plea was involuntary because the trial court did not admonish him that his guilty plea waived his privilege against self-incrimination under the Fifth Amendment and his rights to a jury trial and to confront his accusers under the Sixth Amendment. However, “[t]here is no requirement that appellant be informed of his right against self-incrimination at trial upon a plea of guilty.” *Williams v. State*, 674 S.W.2d 315, 320 (Tex. Crim. App. 1984). Further, a plea of guilty before a jury is considered to be a trial by jury. *Garcia v. State*, 877 S.W.2d 809, 812 (Tex. App.—Corpus Christi 1994, pet. ref’d). And when pleading guilty before a jury, the defendant does not waive his right to confront and cross-examine witnesses. *Id.* Indeed, Guidry questioned the State’s witnesses and presented his own during the punishment phase before the jury.

Guidry asks this court to impose additional items for a trial court to recite to ensure a defendant’s guilty plea is truly voluntary, citing *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed.2d 274 (1969) and *Hill v. Beyer*, 62 F.3d 474 (3d Cir. 1995). *Boykin*, however, only requires that the record affirmatively show that a defendant’s plea is voluntary and intelligently made. *Id.* at 242. In this case, the trial court asked on three separate occasions whether Guidry was making his guilty plea freely and voluntarily, without promise for leniency, without coercion, with knowledge of the full punishment range, and after full consultation with his attorney. The trial court also asked whether Guidry had ever been under the care of a psychiatrist or had serious mental problems. This is sufficient meet *Boykin*’s requirements. Finally, while Guidry’s position on *Hill v. Beyer* and New Jersey law is well argued, Texas law is established on this point. “Failure to admonish a defendant concerning his right to confront witnesses, his privilege against self-incrimination, and his right of compulsory process does not invalidate a plea of guilty otherwise freely and voluntarily made.” *Sims v. State*, 783 S.W.2d 786, 789 (Tex. App.—Houston[1st Dist.] 1990, no pet.); see *Vasquez v. State*, 522 S.W.2d 910, 912 (Tex. Crim. App. 1975). Accordingly, we overrule point of error one.

ARTICLE 26.13

In his second point of error, Guidry contends that his guilty plea was involuntary because the trial court failed to admonish him of the deportation consequences per article 26.13 (a)(4) of the Code of Criminal Procedure. TEX. CODE CRIM. PROC. art 26.13 (a) (Vernon 1989). Failure to admonish a defendant about deportation consequences is harmless if a defendant is a U.S. citizen. *See Matchett v. State*, 941 S.W.2d 922, 930 (Tex. Crim. App. 1996). In this case, the record is silent about Guidry's actual citizenship, although the evidence of his long residence in Texas and attendance at public primary schools suggests that he is a citizen.

Although the failure to give a U.S. citizen the deportation admonishment violates statutory law, it is not constitutional error and does not affect the defendant's substantial rights. *Gorham v. State*, 981 S.W.2d 315, 319 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd), *cert. denied*, — U.S. —, 120 S. Ct. 157, -- L. Ed.2d -- (1999). Additionally, under the rules of appellate procedure, a trial court's error is "constitutional" only when the appellate record affirmatively supports classifying it as such. *Id.*; *see* TEX. R. APP. P. 44.2(a). Where the record does not indicate that an appellant is a non-U.S. citizen, we have no basis to conclude the trial court's error in failing to admonish the appellant about deportation consequences is "constitutional" in nature or affects appellant's substantial rights. *Gorham*, 981 S.W.2d at 319. Thus, as we held in *Gorham*, we are required to disregard the error of which Guidry now complains. *See* TEX. R. APP. P. at 44.2(b). Although Guidry urges us to depart from our holding in *Gorham*, we decline to do so. Accordingly, we overrule point of error two.

Having overruled both points of error, we affirm the trial court's judgment.

/s/ D. Camille Hutson-Dunn

Justice

Judgment rendered and Opinion filed December 16, 1999.

Panel consists of Justices Sears, Cannon, and Hutson-Dunn.*

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

* Senior Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.