OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

12/22/2021
JONES, WILLIAM **Tr. Ct. No. 950D07191-41-4** **WR-51,597-07**

The Court has dismissed without written order this subsequent application for a writ of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Deana Williamson, Clerk

WILLIAM JONES
ROBERTSON UNIT - TDC # 773336
12071 FM 3522
ABILENE, TX 79601

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

WILLIAM JONES,	)	No. 08-97-00011-CR
Appellant,	)	Appeal from
v.	)	41st District Court
THE STATE OF TEXAS,	)	of El Paso County, Texas
Appellee.	)	(TC# 79689)

Exhibit R

95/7191

OPINION

William Jones appeals his conviction for capital murder committed during the course of a robbery. Upon the trial court's acceptance of his plea of guilty, punishment was assessed at life imprisonment in the Institutional Division of the Texas Department of Criminal Justice. We affirm.

PROCEDURAL HISTORY

Appellant was indicted for the felony offense of capital murder. On October 28, 1996, the trial court accepted his plea of guilty and sentenced him to life in prison. On November 15, 1996, Appellant filed a *pro se* motion for new trial, alleging that his plea was involuntary due to his incompetency and due to ineffectiveness of counsel. After trial counsel was allowed to withdraw, newly-appointed counsel filed a motion for new trial on the grounds of incompetency. Following a hearing on December 13, 1996, the court denied the motion for new trial.

Exhibit R

In four points of error, Appellant contends that his plea of guilty was involuntary because he was incompetent to stand trial, because he was unduly influenced to enter a plea of guilty at a time when he was incompetent, because the plea bargain agreement resulted in an unlawful sentence, and because the trial court failed to properly admonished him.

INCOMPETENCE TO STAND TRIAL

In his first point of error, Appellant argues that his plea of guilty was involuntary because at the time of the plea, he was incompetent to stand trial such that his rights of due process have been violated. *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966). Specifically, he complains that the trial court erred when it denied his motion for new trial because the evidence presented at the hearing raised a substantial question concerning his competence to stand trial. In Point of Error No. Two, he contends that his guilty plea was involuntary because he was unduly influenced to enter a guilty plea at a time when he was incompetent to stand trial. Appellant claims that we should remand either for a new trial or for a retrospective competency hearing. We disagree.

Standard of Review

No plea of guilty shall be accepted unless it appears that the defendant is mentally competent and the plea is free and voluntary. TEX.CODE CRIM.PROC.ANN. art. 26.13(b)(Vernon 1989). Pursuant to Article 46.02, § 1, a defendant is competent to stand trial if he has sufficient present ability to consult with his attorney and he understands the proceedings against him. TEX.CODE CRIM.PROC.ANN. art. 46.02, § 1 (Vernon 1979). Competence is presumed. TEX.CODE CRIM.PROC.ANN. art. 46.02, § 1(b).

Exhibit R

Article 46.02, § 2(b) provides that if, during the trial, evidence from any source[1] is brought to the attention of the court casting a bona fide doubt upon the defendant's competence to stand trial, the court must conduct a hearing out of the presence of the jury. TEX.CODE CRIM.PROC.ANN. art. 46.02, § 2(b)(Vernon 1979). If at this hearing, the defendant presents more than a scintilla of evidence that rationally leads to a conclusion of incompetency, the trial court must empanel a jury to determine the competency issue. *Brown*, slip op. at 4, 5. However, if no bona fide doubt arises as to the defendant's competence, the trial court is not required to hold a Section 2(b) hearing. *Ex parte Thomas*, 906 S.W.2d 22, 25 (Tex.Crim.App. 1995), *cert. denied*, ---- U.S. ----, 116 S.Ct. 2556, 135 L.Ed.2d 1074 (1996). In determining whether the evidence was sufficient to trigger the Section 2(b) hearing, we consider the evidence in a light most favorable to the defendant, disregarding contrary evidence and inferences. *Brown*, slip op. at 7. As the reviewing court, we do not consider evidence presented post-trial unless it serves to explain or define evidence of incompetence already before the court. *Id.* at 6-7.

A defendant may challenge his competency to stand trial in a motion for new trial. *Brown*, slip op. at 12. When the competency issue is raised in this manner, the trial court reviews all of the evidence presented, both at trial and post-trial, judges the credibility of the witnesses, and resolves conflicts in the evidence. *Id.* at 13. Consequently, to evaluate a defendant's claim that the trial court erroneously denied his motion for new trial, we must consider all of the competency evidence presented at the hearing on the motion for new trial. *Id.* at 13. We can reverse only if we determine

---

[1] Evidence creating doubt about a defendant's competency may come from the trial court's observations, known facts, motions, affidavits, or other evidence presented. *Brown v. State*, Nos. 05-95-01491-CR, slip op. at 4 (Tex.App.--Dallas August 20, 1997)(not yet reported).

Exhibit R

that the trial court abused its discretion.[2] *Brown*, slip op. at 13. This standard is applied because the trial court must determine whether the integrity of its judgment has been impugned by the defendant's incompetence at trial. *Id.* at 13. Having observed the witnesses at both the trial and the hearing on the motion for new trial, the trial court is in the best position to make this determination. *Id.* If, in resolving the conflicts in the evidence regarding competency, the trial court determines that the integrity of the judgment has been called into question, it may then empanel a jury to determine retrospectively the competency issue or it may order a new trial. *Id.* If the trial court determines otherwise, it may deny the motion. *Id.* at 14.

The Guilty Plea

The record reflects that at the time of the plea, Appellant was represented by Sam Medrano and Dolph Quijano. The trial court admonished Appellant both in writing and orally pursuant to Article 26.13 of the Texas Code of Criminal Procedure. TEX.CODE CRIM.PROC.ANN. art. 26.13 (Vernon 1989 & Vernon Supp. 1998). Appellant testified that he understood the charges, that he had an opportunity to discuss the case with both of his trial attorneys, and that he was satisfied with their representation. He acknowledged that he understood the recommendation of the State and that he had no questions concerning his rights. He admitted that he had discussed the documents fully with his attorneys and that he signed them freely and voluntarily. Even more telling is the exchange between the trial court and Appellant regarding his mental state. The trial court questioned Appellant on his past mental history and specifically asked Medrano, in the presence of Appellant, whether he had been able to converse with Appellant and if Appellant had been able to assist in his

[2] A trial court abuses its discretion if its decision is arbitrary or unreasonable. *Lewis v. State*, 911 S.W.2d 1, 7 (Tex.Crim.App. 1995).

Exhibit R

own defense. Both Medrano and Quijano stated at that time that Appellant was competent and understood the nature of the charges against him. We find no evidence in the record of the plea hearing raising a bona fide doubt as to Appellant's competence.

Evidence Presented at the Hearing on the Motion for New Trial

Appellant testified that at the time of the plea hearing, he was taking various medications for panic disorder and was under the treatment of Dr. Miriam Marvasti, a psychiatrist. He claimed that his plea was involuntary because he was under pressure from his attorney, his family and friends to plead guilty. He had received letters from his high school teacher and from his bedridden grandmother urging him to plead guilty in order to avoid the death penalty. Appellant contended that he had wanted to enter an insanity plea based on homophobia.[3]

Dr. Marvasti testified that she had treated Appellant for depression, insomnia, and panic attacks. She revealed that while depression itself can impair judgment, none of the medication that Appellant was taking would impair his judgment.

Medrano testified that at least three psychiatrists had examined Appellant and determined that he was competent and not mentally ill. One or two of the psychiatrists believed Appellant was trying to fake incompetence in order to pursue an insanity defense. Medrano acknowledged that in his investigation and representation of Appellant, Appellant was not insane at the time of the offense, nor could counsel ethically make such a representation to the court. Quijano testified that on the date of the plea, he and Medrano had reviewed the lengthy plea documents with Appellant who appeared to understand all that was discussed with him. Quijano recounted that Appellant did not appear to

[3] Appellant alleges that the murder victim was a homosexual who had made advances towards him.

Exhibit R

be psychotic or depressed, and instead appeared normal. Further, although there was testimony from the detention facility nurse that on the date of the plea, Appellant had not received his medication, the guard who escorted Appellant to the hearing indicated that Appellant appeared normal and "was looking forward to getting whatever problem he had over with the Court."

At the hearing on the motion for new trial, the trial court was the sole judge of the credibility of the witnesses and we are not at liberty to substitute our judgment. *Brown*, slip op. at 18. While the evidence regarding Appellant's competence is conflicting, the trial court did not abuse its discretion in denying the motion for new trial. *Id.* Accordingly, we cannot conclude that Appellant's plea was involuntary either because he was incompetent to stand trial or because he was pressured to plead guilty at a time when he was incompetent. Points of Error Nos. One and Two are overruled.

THE PLEA BARGAIN

In his third point of error, Appellant claims that his guilty plea was involuntary because the plea bargain agreement cannot be enforced and has resulted in an unlawful sentence. The agreement "stacked" the life sentence for the murder on top of a life sentence for aggravated robbery.

Pursuant to TEX.CODE CRIM.PROC.ANN. art. 42.08(a)(Vernon Supp. 1998), the trial court has discretion to order two or more sentences to run either concurrently or consecutively. *Rivera v. State*, 885 S.W.2d 581, 585 (Tex.App.--El Paso 1994, no pet.). Appellant contends that unless the sentences are imposed on the same day, the sentences may not be cumulative. In support of this contention, he cites *Ex parte Voelkel*, 517 S.W.2d 291 (Tex.Crim.App. 1975). There, the defendant was convicted of embezzlement in cause number 163672 and sentenced to four years' incarceration. Three years later, he was convicted of embezzlement in cause numbers 163673 and 163674; the trial

Exhibit R

court imposed punishment of four years in each case. The following day, the court "set aside" the sentence in 163673 and ordered that it not begin until the punishment in 163672 had been completed. The Court of Criminal Appeals concluded that the cumulation order imposed in 163673 was void and of no legal effect since Voelkel had already begun serving the sentence. Significantly, the court did not hold that there could be no cumulation order imposed in 163673 because Voelkel had already begun serving the sentence in 163672. Indeed, had the cumulation order been entered in 163673 a day earlier, no legal impediment would have existed.

Here, the cumulation order was entered at the time of sentencing in the murder case. We conclude that the trial court did not abuse its discretion in cumulating the sentence with that imposed in the aggravated robbery. Point of Error No. Three is overruled.

Not it was Oct. 14th. But attorney never investigated Galveston convict

THE ADMONISHMENT

In his final point of error, Appellant argues that his plea was involuntary because the trial court improperly admonished him concerning the assessment of punishment. At the time of the guilty plea, the court admonished Appellant as follows:

> Before I can accept your plea of guilty, I must advise you of your rights. The most important right you have is the right to plead not guilty and to be tried by a jury.
>
> That jury can not only determine your guilt or innocence, but that jury can also determine your punishment.

Appellant contends this admonishment is improper because had he chosen to be tried by a jury, it could have only determined his guilt, with the trial court assessing punishment. Although not clearly stated, we interpret this argument to be that because Appellant had pled guilty to capital murder in return for the State not seeking the death penalty, the mandatory life sentence would be automatically imposed without any consideration of punishment by a jury.

Exhibit R

If a defendant waives his right to a jury trial and enters a plea of guilty before the court, the trial judge is not required to advise him of his right to have a jury assess punishment. *Edwards v. State*, 663 S.W.2d 142, 144 (Tex.App.--Houston [1st Dist.] 1983, no pet.), *citing Laue v. State*, 491 S.W.2d 403 (Tex.Crim.App. 1973). Since Appellant pled guilty and waived his right to a jury trial, the trial judge was not required to admonish him concerning the jury's assessment of punishment. Point of Error No. Four is overruled.

We affirm the judgment of conviction.

May 21, 1998

/s/ Ann Crawford McClure
ANN CRAWFORD McCLURE, Justice

Before Panel No. 2
Barajas, C.J., McClure, and Chew, JJ.

(Do Not Publish)