Year 2004 Case Summaries

By
Robert O. Dawson
Bryant Smith Chair in Law
University of Texas School of Law

2004 Case Summaries
2003 Case Summaries
2002 Case Summaries
2001 Case Summaries
2000 Case Summaries
1999 Case Summaries

Plea of true not involuntary because respondent erroneously believed himself eligible for probation on Mexican National Children's Program [In re C.R.R.E.] (04-1-21).

On February 5, 2004, the El Paso Court of Appeals held that respondent's plea of true was not involuntary because he erroneously believed himself eligible for probation on the Mexican National Children's Program; the Court also held that J.S.S., dealing with the privilege against self-incrimination in the pre-disposition report, should be restricted to its facts.

04-1-21. In the Matter of C.R.R.E., UNPUBLISHED, No. 08-02-00476-CV, 2004 WL 231928, 2004 Tex.App.Lexis ____ (Tex.App.-El Paso 2/5/04) Texas Juvenile Law (5th Ed. 2000).

Facts: C.R.R.E., a juvenile, appeals from a disposition order committing him to the Texas Youth Commission. On appeal, Appellant raises three issues: (1) whether his plea was involuntary; (2) whether the trial court erroneously denied his motion to withdraw plea of true and to suspend commitment to the Texas Youth Commission because of Appellant's involuntary plea of true; and (3) whether his Fifth Amendment right to remain silent was violated when during a pre-disposition report, incriminating statements were obtained and the report was introduced at the disposition hearing.

Appellant, a juvenile, is a Mexican national illegally in the U.S. At the adjudication hearing held on September 6, 2002, Appellant waived his rights to a hearing before a juvenile court judge and to a jury trial, and agreed to a trial before the juvenile court referee. He was adjudicated for engaging in delinquent behavior of the felony offense of possession of a usable quantity of marijuana in the amount of fifty pounds or less but more than five pounds, in violation of the Texas Health & Safety Code § 481.121(b)(4), as alleged in the State's Second Amended Petition Based on Delinquent Conduct. Appellant pled true to the offense and signed a "Waiver, Stipulation and Admission" form. The court accepted Appellant's plea and found that he had engaged in delinquent conduct. A disposition hearing was scheduled for September 20, 2002.

At the disposition hearing, Manuel Torres, Jr., a juvenile probation officer with the Juvenile Probation Department, testified that he had prepared a pre disposition report for the hearing. Mr. Torres stated that he had interviewed Appellant's parents and they told him that Appellant was rebellious and would sometimes leave home or come home late at night. If they scolded him, Appellant would just argue with his father. Appellant's parents indicated to Mr. Torres that they would prefer to have the juvenile at home if at all possible. Mr. Torres testified that since Appellant had committed a felony, sending him back home was not a possibility because the Mexican National Children's Program was only for juveniles who had committed misdemeanors. He stated that the only option in this case was to have Appellant committed to the Texas Youth Commission.

Rosa Maria Aguirre, coordinator for the Mexican Young Violators, was also called as a witness at the hearing. Ms. Aguirre testified that she had spoken to Appellant's parents before he entered his plea of true. The parents had expressed concerns with Appellant's rebellious behavior. Ms. Aguirre testified that at the present time, there was no program available which would allow Appellant to be transferred to Ciudad Juarez. It was also her opinion that Appellant's parents would be unable to provide the necessary supervision required to be admitted into the Mexican National Children's Program.

Appellant's parents, Mario Ruiz Esparza Rodriguez and Emilia Trujillo Briones also testified at the disposition hearing. Both of their testimonies indicated that Appellant's behavioral problems were exaggerated by Mr. Torres's testimony. They also indicated that they had been told by Mr. Torres and Ms. Aguirre that their son would have two options: probation, or sending him to a state school, a type of jail and rehabilitation center. The father testified that a decision had not been reached as to where Appellant would be placed. The mother asked the judge to allow Appellant to go back home with the family.

At the end of the disposition hearing, the court referee ordered Appellant to be committed to the Texas Youth Commission.

On October 7, 2002, Appellant filed a motion to withdraw the plea of true and to suspend commitment to the Texas Youth Commission. The motion stated that Appellant's plea was involuntary because Appellant's parents were told that if their child entered a plea of true, the court could either: (1) place Appellant on probation until his 18th birthday by placing him with the Mexican National Children's Program in Mexico; or (2) Appellant could be committed to the Texas Youth Commission until his 21st birthday. It was alleged that based on these representations, Appellant entered a plea of true. It was not until the disposition hearing that Appellant and his attorney discovered that the only option was commitment to the Texas Youth Commission. Since the alleged deception was not discovered until the day of the disposition hearing when Appellant's attorney received the pre-disposition report prepared by Mr. Torres, it is alleged that Appellant's plea of true was involuntary. The court denied Appellant's motion to withdraw the plea on October 25, 2002.

On October 9, 2002, Appellant filed a motion for new trial. The motion stated that Appellant and his parents were told that he could be placed with the Mexican National Children's Program, an option not mentioned in the pre-disposition report. The motion also alleged that the requirements of Tex.Fam.Code Ann. § 54.04(n)(2)(B) and (C) were not complied with because (1) the causes of the Juvenile's behavior were not properly brought before the Referee, and (2) dispositions other than placement in a secure detention facility had been exhausted or were clearly inappropriate. Appellant's motion was apparently overruled by operation of law. Appellant now brings this appeal.

Held: Affirmed.

Opinion Text: Issues One and Two are related in that both address the issue of Appellant's plea of true. In Issue One, Appellant asserts that his plea was involuntary because he had been led to believe that he was eligible for the Mexican National Children's Program and would not have pled true but for that belief. In Issue Two, Appellant argues that the juvenile court erred when he denied Appellant's motion to withdraw plea of true and to suspend commitment to the Texas Youth Commission in that Appellant's plea of true was not voluntary.

The contention that Appellant did not have a full understanding of the proceedings and of the possible consequences of a finding of delinquent conduct is not supported by the record. Appellant claims the adjudication hearing should have been postponed due to the confusion caused by change of attorneys and the fact that Appellant did not fully understand the "Waiver, Stipulation and Admission" form. Although it is true that Appellant had a different attorney than the one who represented him in this matter, this did not affect Appellant's ability to understand the allegation against him and the consequences of a plea of true. During the adjudication hearing, the court asked Appellant if he had a chance to discuss the allegation against him with his attorney. Appellant's first response was no and then he went on to explain to the court that he had another attorney appointed to him that was not the one representing him at the hearing. However, both attorneys were from the El Paso County Public Defender's office. Before accepting his plea, the court also established Appellant had discussed the allegations with his previous attorney and that he fully understood the allegations made against him. Based on these acts found in the record, we believe that Appellant did not suffer confusion as a result of the change in attorneys appointed to represent him in this case.

There is no dispute as to whether Appellant was properly admonished as required by the Tex.Fam.Code Ann. § 54.03(b)(Vernon Supp.2004). Appellant also signed a "Waiver, Stipulation and Admission" form indicating that he understood the consequences of his plea of true and further, that he entered it knowingly and voluntarily. The court asked Appellant if he had gone over this form with his attorney before it was signed. Appellant first answered no, but his attorney clarified that the interpreter had explained to him the contents of the form and that he was present while this was being done. Appellant then stated that he had not reviewed the form in its entirety, so the court allowed a short recess for Appellant and his attorney to go over the form. After the recess, Appellant stated that he had fully understood the entire form and that he was neither forced to sign nor promised anything in return for signing the form.

Nothing in the record supports Appellant's theory that he did not understand the consequences of his plea and that he only entered his plea because of the possibility of being placed in the Mexican National Children's Program. Appellant specifically stated to the court that he was pleading true because the allegations were true and for no other reason. We find that the record shows that Appellant was properly admonished, and that he was aware and understood the consequences of entering a plea of true. We find that Appellant's plea of true was entered voluntarily and knowingly. We therefore overrule Issue One.

The trial court's decision regarding the denial of a motion to withdraw a plea is governed by an abuse of discretion standard. In the Matter of E.J.G.P., 5 S.W.3d 868, 873 (Tex.App. El Paso 1999, no pet.). The trial court abuses its discretion if it acts without reference to any guiding rules or principles. In the Matter of C.J.H., 79 S.W.3d 698, 702 (Tex.App. Fort Worth 2002, no pet.). Stated another way, we look to see if the court acted in an arbitrary or unreasonable manner. Id. The mere fact that a trial judge may decide a matter within his discretionary authority in a different manner than an appellate judge in a similar circumstance does not demonstrate an abuse of discretion has occurred. In the Matter of L.R., 67 S.W.3d 332, 339 (Tex.App. El Paso 2001, no pet.).

Appellant argues that his plea of true was involuntary because of his mistaken belief that he had another option besides being committed to the Texas Youth Commission, which was a belief that had been formed due to the deception of the Juvenile Probation Department. In support of this claim, Appellant attempts to analogize the matter at hand with the case, In the Matter of R.S.C ., 940 S.W.2d 750, 752 (Tex.App. El Paso 1997, no writ). In that case, the juvenile waived his rights and stipulated that he had committed the offense of unlawfully carrying a weapon. Id. at 751. The juvenile on appeal challenged the denial of a motion to suppress evidence. Id. This Court recognized that in light of the juvenile's waivers, stipulations, and failure to object, the consideration of the issue would end. Id. at 752. However, this Court went on to hold that R.S.C.'s waiver of his rights and stipulation of evidence was involuntary because it was based upon the mistaken understanding that he could appeal the denial of his motion to suppress despite his waiver of rights and stipulation of evidence. R.S.C., 940 S.W.2d at 752 53. This Court also stated that its holding was limited to the specific facts in that case. Id. at 753. The case before the Court in this matter can be distinguished in that Appellant was not given any assurances by the trial court as was the case in R.S.C. [FN1] It is apparent from the record that Appellant entered a plea of true voluntarily out of his own free will, without any assurances or promises by the trial court or anyone else. Based on our review of the record, we find that Appellant has not made a showing that the trial court abused its discretion in denying the motion to withdraw the plea of true. We overrule Issue Two.

FN1. R.S.C. was given assurances by the trial court that he could appeal the ruling on the motion to suppress. R.S.C., 940 S.W.2d at 752.

In his third issue, Appellant alleges that his Fifth Amendment right to remain silent was violated as a result of an incriminating statement obtained during a pre-disposition report interview during which his rights were not read to him, and by the trial court's consideration of the report during the disposition hearing. Tex.R .App.P. 33.1 requires a party to present to the trial court a timely request, objection, or motion, stating the grounds for the ruling desired with sufficient specificity, unless the specific grounds were apparent from the context. During the disposition hearing, the State asked to introduce the pre-disposition report as Exhibit One and Appellant's counsel objected on the grounds that there were inaccuracies regarding statements that were made by the parents to Mr. Torres and Ms. Aguirre. According to Appellant's counsel, the report contained comments and wishes of the parents that were never expressed by the parents. Counsel stated that until he had the opportunity to cross-examine Mr. Torres and Ms. Aguirre, he would object to the admission of the report. He also stated that he may want to have part of the report redacted. The court held off its decision until counsel had a chance to cross-examine the witness but allowed the State to make reference to the report, to which Appellant's counsel did not object. Appellant's counsel did not state that his objection to the pre-disposition report was based on a violation of the juvenile's Fifth Amendment rights. Counsel also did not object to any of the questions and testimony provided by Mr. Torres and Ms. Aguirre. After the testimony given by Mr. Torres and Ms. Aguirre, corrections regarding Appellant's parents wishes as to having him detained rather than placed with the Texas Youth Commission were made to the pre-disposition report. The report was then admitted without any objection by Appellant's counsel. Accordingly, we find that Appellant has not preserved this complaint for our review. See Tex.R.App.P. 33.1

However, even if we believed that Appellant had properly preserved this issue, we would conclude that Appellant's Fifth Amendment rights were not violated. Appellant relies on the opinion of this Court in the case of In the Matter of J.S.S., 20 S.W.3d 837, 839-40 (Tex.App.-El Paso 2000, pet. denied), for the position that the Fifth Amendment privilege against self-incrimination applies to a pre-disposition report. However, our holding in that case did not reach such a broad finding. In that case, the juvenile's probation officer exceeded the neutral purposes of the pre-disposition interview and not only questioned him about the act he had committed but also about two other extraneous offenses. J.S.S., 20 S.W.3d at 840. The probation officer then testified to these acts and used them to support his recommendation to commit J.S.S. to commitment to the Texas Youth Commission. Id. at 846. This Court held that under the specific facts of the case before it, the appellant should of been warned of his rights and informed that his statements could be used against him during the disposition hearing. J.S.S., 20 S.W.3d at 846. However, the Court added the following footnote to this statement where it stated that:

Our opinion should not be read as holding that the Fifth Amendment applies to all pre disposition interviews because of the facts in a given case may show that the interview served more neutral purposes, and therefore, did not implicate the juvenile's Fifth Amendment rights. Rather than focusing on the type of proceeding involved, we believe the better approach is to examine the nature of the statement or admission and the exposure which it invites.

Id. at 846 n. 7.

In this case, the pre-disposition report did not include information regarding the juvenile's admission that he had previously smuggled drugs into the U.S.. The record indicates that Mr. Torres never asked Appellant about any extraneous offenses. Mr. Torres testified that Appellant had himself indicated that there were two prior occasions in which he smuggled drugs into the U.S., but that this information was not included in the pre-disposition report. It also appears the Appellant mentioned these two prior incidents to the doctor who conducted his psychological evaluation, since the psychological evaluation report indicated that Appellant had admitted to successfully smuggling drugs two times prior to his arrest. Thus, the facts in this case are distinguishable from J.S.S. There is nothing in the record to suggest that Appellant's Fifth Amendment rights were violated. And the record indicates that the trial court reached its

decision without taking into account those prior acts. We therefore overrule Issue Three.

2003 Case Summaries 2002 Case Summaries 2001 Case Summaries 2000 Case Summaries 1999 Case Summaries