

Year 2004 Case Summaries

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Plea of true in criminal trial to juvenile adjudication used for enhancement precludes challenging its use for enhancement [Hall v. State] (04-2-28).

On May 13, 2004, the Houston First District Court of Appeals held that defendant's plea of true to a 1991 adjudication precluded his challenge that the adjudication was inadmissible in the criminal trial because it occurred before 1996.

04-2-28. Hall v. State, ___ S.W.3d ___, No. 01-02-01167-CR, 2004 WL 1064788, 2004 Tex.App.Lexis ___ (Tex.App.--Houston [1st Dist.] 5/13/04) Texas Juvenile Law (5th Ed. 2000).

Facts: Two separate indictments charged appellant, Aaron Hall, with the felony offenses of murder and conspiracy to deliver over 400 grams of cocaine. In a single trial, a jury convicted appellant of both offenses. Appellant pleaded true to the single enhancement paragraph in each indictment, and the jury assessed punishment at 65 years' confinement for the murder, and 30 years' confinement and a \$5,000 fine for the conspiracy. In five issues under each appellate cause number, appellant contends that (1) the evidence is legally and factually insufficient to support convictions for murder and conspiracy, (2) the trial court abused its discretion by admitting certain autopsy photographs that were more prejudicial than probative, (3) appellant was selectively prosecuted, and (4) appellant's punishment enhancement paragraph alleged a prior juvenile adjudication that was not a final conviction.

Held: Affirmed.

Opinion Text: Enhancement Paragraph

In his fifth point of error for each of his convictions, appellant contends that his prior juvenile adjudication did not constitute a final felony conviction, and, thus, could not properly be used to enhance his punishment. The punishment enhancement paragraph had the effect of raising the statutory possible minimum sentence from five years to 15 years. See Tex. Pen.Code Ann. § 12.42(c)(1) (Vernon 2003).

Appellant pleaded true to the enhancement paragraph, which alleged, "Before the commission of the offense alleged above, on August 15, 1991, in cause number 73882, in the 315th District Court of Harris County, Texas, the defendant was convicted of Capital Murder, a felony offense." The State introduced a judgment from the 315th District Court, dated August 15, 1991, that ordered appellant to the custody of the Texas Youth Commission (TYC) for a term of 15 years, until appellant turned 17 1/2 years of age, at which time he would be returned to court for a hearing to determine whether he should be released under the supervision of the TYC or transferred to the Texas Department of Corrections.

Appellant asserts that the judgment admitted into evidence concerning his enhancement paragraph establishes that the enhancement paragraph was for a juvenile conviction for a 1991 offense, and under *Sims v. State*, 84 S.W.3d 768 (Tex.App. Dallas 2002, no pet.), [FN3] it was invalid for enhancement purposes. Although the State contends that the enhancement paragraph is valid, the State asserts that appellant's plea of true to the enhancement paragraph is alone sufficient to show that he had a prior felony conviction. See *Dinn v. State*, 570 S.W.2d 910, 915 (Tex.Crim.App. [Panel Op.] 1978). We conclude that appellant's plea of true precludes his complaint about the insufficiency of the evidence to establish his enhancement paragraph. See *Dinn*, 570 S.W.2d at 915; *Harrison v. State*, 950 S.W.2d 419, 422 (Tex.App. Houston [1st Dist.] 1997, pet. ref'd).

FN3. *Sims* held that, as a matter of law, under section 51.13(d) of the Family Code, the appellant's felony adjudication was not a "final felony conviction" because the underlying criminal conduct occurred prior to January 1, 1996. *Sims*, 84 S.W.3d at 780; see also Tex.

Fam.Code Ann. § 51.13(d) (Vernon 2002). Sims pleaded not true to the enhancement paragraph at his trial. Sims, 84 S.W.3d at 778.

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