YEAR 2005 CASE SUMMARIES

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Juvenile felony adjudication admissible in adult penalty proceedings [Parrish v. State] (05-1-18)

On the February 2, 2005, the Waco Court of Appeals held that evidence of a felony juvenile adjudication is admissible in adult criminal proceedings.

05-1-18. Parrish v. State, UNPUBLISHED, No. 10-04-00037-CR, 2005 WL 241193, 2005 Tex.App.Lexis ___ (Tex.App.—Waco 2/2/05) *Texas Juvenile Law* (6th Ed. 2004).

Facts: Charleston Lewis Parrish appeals his sentence for murder.

In Parrish's first issue, he contends that the trial court rendered judgment without a finding of guilt. Parrish pled guilty and the jury assessed his punishment. The trial court instructed the jury to find Parrish guilty, and the verdict recited in relevant part, "We, the Jury, having found the Defendant ... guilty of the offense of Murder, ... assess his punishment...." Parrish argues that the verdict does not include a finding of guilt. Parrish made no objection to the verdict, sentence, or judgment; and thus waived his complaint. *See* Tex.R.App. P. 33.1(a); *Mendez v. State,* 138 S.W.3d 334, 338 (Tex.Crim.App.2004); *Keller v. State,* 125 S.W.3d 600, 606 (Tex.App.--Houston [1st Dist.] 2003, pet. granted on other grounds) (judgment). We overrule Parrish's first issue.

In Parrish's second issue, he contends that the trial court's charge did not require a unanimous verdict on the issue of sudden passion. *See* Tex. Penal Code Ann. § 19.02(a)(2), (d) (Vernon 2003). The charge defined sudden passion and instructed the jury on it, and instructed the jury that the verdict must be unanimous. For each possible sentence, the court gave the jury a verdict form that was predicated on the finding either, "We, the Jury, having found the Defendant ... guilty of the offense of Murder, not under the immediate influence of sudden passion," or, "We, the jury, having found the Defendant ... guilty of the offense of Murder, and do further find that the defendant was acting under the immediate influence of sudden passion." The trial court did not abuse its discretion. *See* Tex.Code Crim. Proc. Ann. art. 36.14 (Vernon 1981); *Hankins v. State,* 132 S.W.3d 380, 386-87 (Tex.Crim.App.2004); *Watts v. State,* 99 S.W.3d 604, 611 (Tex.Crim.App.2003). We overrule Parrish's second issue.

In Parrish's third issue, he contends that the trial court erred in overruling his objection to the admission of his juvenile dispositions for felony theft, including commitments to the Texas Youth Commission. The Texas Family Code provides, "The adjudication or disposition of a child or evidence adduced in a hearing under" the Juvenile Justice Code "may be used ... in subsequent ... sentencing proceedings in criminal court against the child to the extent permitted by the Texas Code of Criminal Procedure, 1965." Tex. Fam.Code Ann. § 51.13(b) & (2) (Vernon 2002). The Code of Criminal Procedure, in turn, provides in part:

> (a) (1).... [S]ubject to Subsection (h) [sic], evidence may be offered by the state and the

> defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of:
>
> (A) a felony; or
>
> (B) a misdemeanor punishable by confinement in jail.
>
> ....
>
> (h) Regardless of whether the punishment will be assessed by the judge or the jury, neither the state nor the defendant may offer before sentencing evidence that the defendant plans to undergo an orchiectomy.
>
> (i) Evidence of an adjudication for conduct that is a violation of the grade of misdemeanor punishable by confinement in jail is admissible only if the conduct upon which the adjudication is based occurred on or after January 1, 1996.

Tex.Code Crim. Proc. Ann. art. 37.07, § 3 (Vernon Supp.2004-2005).

In *Goodman v. Texas,* the Texas Court of Criminal Appeals, in interpreting former Section 51.13, has held that juvenile dispositions are admissible where the trial court deems them relevant to sentencing. *See Goodman v. State,* 701 S.W.2d 850 (Tex.Crim.App.1985); Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, sec. 51.13(b), 1973 Tex. Gen. Laws 1460, 1466 (amended 1999) (current version at Tex. Fam.Code Ann. § 51.13(b)). There, the Court held that evidence that the appellant, "as a juvenile," committed theft and "was sent to reform school" was admissible under Code of Criminal Procedure Article 37.071, which governs the punishment phase of capital cases, since that article "permits admission of evidence regarding any matter the court deems relevant to the sentence." *Goodman* at 867; *see* Tex.Code Crim. Proc. Ann. art. 37.071, § 2(a)(1) (Vernon Supp.2004-2005). Article 37.07, Section 3, governing non-capital cases, now, like Article 37.071, makes evidence "as to any matter the court deems relevant to sentencing" admissible. Tex.Code Crim. Proc. Ann. art. 37.07, § 3(a)(1). "While article 37.07 § 3(a) does not allude to 'dispositions' of juvenile cases, it does not forbid their use when the trial court deems the evidence to be relevant to sentencing ." *Santoya v. State,* No. 04-94-00761-CR, 1996 WL 14073, at *8 (Tex.App.-San Antonio Jan. 17, 1996, pet. filed) (not designated for publication). Moreover, a person's commitment to the Texas Youth Commission is admissible in "imposing sentence in any criminal proceeding against the same person...." Tex. Hum. Res.Code Ann. § 61.066(2) (Vernon 2001).

Accordingly, the trial court did not err in overruling Parrish's objections to evidence of his juvenile dispositions. We overrule Parrish's third issue.

In Parrish's fourth issue, he contends that the trial court erred in not *sua sponte* withdrawing his plea of guilty. The Court of Criminal Appeals has overruled the cases on which Parrish relies. *See Mendez,* 138 S.W.3d 334. We overrule Parrish's fourth issue.