
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Failure to present certain due process complaints at trial waives them.[In the Matter of C.S.](06-4-2)

On August 4, 2006, the Dallas (5th Dist.) Court of Appeals held that appellant did not show that the errors complained of were either "waivable only" or "absolute systemic requirements," as a result, failure to raise at trial waived them.

¶ 06-4-2. **In the Matter of C.S.**, No. 05-05-01597-CV, 2006 Tex.App.Lexis 6926 [Tex.App.— Dallas (5th Dist.), 8/4/06].

Facts: In 2004, appellant was adjudicated a child engaged in delinquent conduct in Dallas County and placed on probation for one year in his parents' custody. Just over three months after appellant's probation began, he was detained for two new offenses in Collin County. At that time, Dallas County stopped supervising appellant, and he was placed on "warrant status." Despite several attempts, the warrant was never executed. In 2005, the State filed a motion to modify disposition of the Dallas offenses alleging appellant had violated the terms of his probation by failing to attend school. Appellant pleaded true to the allegation and after a hearing, the trial court committed appellant to the TYC.

Held: Affirmed, with modifications

Opinion: In his first two issues, appellant asserts his due process rights under the state and federal constitutions were violated because the trial court stated that if appellant were a Dallas County resident, it might consider a placement other than the TYC. Generally, to preserve a complaint for appeal, appellant must first present his specific contentions to the trial court. *See TEX. R. APP. P. 33.1*. Our review of the record reveals that appellant never presented his due process complaints to the trial court during or after the hearing. Almost all trial error, even constitutional error, is waived if appellant fails to object to the error at trial. *See Aldrich v. State, 104 S.W.3d 890, 894 (Tex. Crim. App. 2003)*. There are two exceptions to the general rule involving violations of rights that are either "waivable only" or "absolute systemic requirements." *Id.* Appellant has not argued his due process complaints fall into one of these narrow categories, and we do not believe that they do. He has therefore waived these complaints.

In his fourth issue, appellant asserts, and the State agrees, that the trial court's order contains several errors. We have authority to modify incorrect judgments when the necessary information is available to do so. *See TEX. R. APP. P. 43.2(b); Bigley v. State, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); Asberry v. State, 813 S.W.2d 526, 529 (Tex. App.-Dallas 1991, pet. ref'd)*.

Conclusion: Affirmed as modified.

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