

Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Prima facie showing of prior conviction (from juvenile C & T) makes evidence legally sufficient to support trial court finding for enhancement.[Terrell v. State](07-4-8)

On May 23, 2007, the Waco Court of Appeals held that, while the pen packet affirmatively showed on its face that defendant was sixteen, once the State establishes a prima facie showing of his prior conviction, it was defendant's burden to make an affirmative showing of any defect in the judgment, whether that is to show no waiver of indictment or no transfer order.

¶ 07-4-8. **Terrell v. State**, 228 S.W.3d 343, 2007 Tex.App.Lexis 4142 (Tex.App.— Waco, 5/23/07).

Facts: Defendant challenged a decision from the 85th District Court Brazos County, Texas, which convicted him of indecency with a child. He also challenged the enhancement of his sentence with a prior juvenile conviction.

Issue One Omitted

In his second issue, Terrell asserts that the evidence is legally insufficient to support the trial court's "true" finding on the enhancement paragraph. At punishment, the State introduced, without objection, a penitentiary packet containing Terrell's fingerprints and a judgment for Terrell's 1982 "aggravated rape" conviction. He was sentenced to thirty years in prison for that offense. After both sides rested, Terrell's counsel argued that Terrell was only age sixteen when the 1982 judgment was rendered and concluded that the State failed to prove a final conviction. On appeal, Terrell contends that the pen packet affirmatively shows that he was sixteen at the time that offense was committed, and thus the judgment is void because Terrell was too young to be convicted of the offense. *See Tex. Fam. Code Ann. § 51.02(2)(A)* (Vernon Supp. 2006).

Held: Affirmed

Opinion: The State establishes a prima facie showing of a prior conviction by introducing a copy of the judgment and sentence in each case used for enhancement and connecting them with the defendant. *Johnson v. State*, 725 S.W.2d 245, 247 (Tex. Crim. App. 1987). Once the State introduces a judgment and sentence and connects the defendant with them, we presume regularity in the judgment. *Id.* The burden then shifts to the defendant, who must make an affirmative showing of any defect in the judgment, whether that is to show no waiver of indictment or no transfer order. *Id.* Terrell does not argue that the pen packet was inadmissible; he contends that he was not required to do anything further because the pen packet affirmatively showed on its face that his age was sixteen. He must do more, however. The defect that he must show was that there was no order transferring him from juvenile court to district court. *See id.*; *Tex. Fam. Code Ann. §§ 51.08, 54.02* (Vernon 2002 and Supp. 2006). He did not make that showing. Because the State made a prima facie showing of Terrell's prior conviction, the evidence is legally sufficient to support the trial court's finding. We overrule Terrell's second issue.

Conclusion: Having overruled Terrell's two issues, we affirm the trial court's judgment.