

Review of Recent Juvenile Cases (2009)

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

While the offense of drag racing and causing a person's death is a traffic offense, it is punishable by imprisonment or confinement in jail, and is therefore delinquent conduct and the juvenile court has jurisdiction over it.[In the Matter of A.M.M.](09-1-3)

On December 11, 2008, the Houston Court of Appeals (1 Dist), held that the juvenile court has jurisdiction over the offense of drag racing and causing a person's death because it is an offense punishable by imprisonment or confinement which in turn makes it delinquent conduct.

¶ 09-1-3. **In the Matter of A.M.M.**, MEMORANDUM, No. 2007-01555J, 2008 WL 5178969 (Tex.App.-Hous. (1 Dist.) 12/11/08).

Facts: Appellant was charged with delinquent conduct, specifically drag racing and causing the death of another person. Appellant applied for a writ of habeas corpus alleging that the trial court lacked jurisdiction because the alleged offense was a traffic offense and not properly before the juvenile court. After a hearing, the trial court denied habeas corpus relief and filed findings of fact and conclusions of law one week later.

A trial court's ruling in a habeas corpus proceeding should not be overturned absent a clear abuse of discretion. *Milner v. State*, 263 S.W.3d 353, 356 (Tex.App.--Houston [1st Dist.] 2008, no pet.). This case involves a pure question of law, which we will review de novo. *Ex parte Peterson*, 117 S.W.3d 804, 819 (Tex.Crim.App.2003), overruled in part on other grounds by *Ex parte Lewis*, 219 S.W.3d 335, 371 (Tex.Crim.App.2007). In his sole issue, appellant asks whether the offense of "racing on the highway" is within the jurisdiction of the juvenile court or within the jurisdiction of the justice or municipal court. See TEX. TRANSP. CODE ANN. § 545.420(a)(3) (Vernon Supp.2008).

Held: Affirmed.

MEMORANDUM OPINION: A juvenile court has jurisdiction over all cases involving the delinquent conduct of a child. TEX. FAM.CODE ANN. § 51.04(a) (Vernon 2002); see *id.* §51.02(2) (Vernon Supp 2008) (defining "child"). "Delinquent conduct is conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or confinement in jail...." *Id.* § 51.03(a) (Vernon Supp.2008). A traffic offense is "a violation of a Penal statute cognizable under Chapter 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail." *Id.* § 51.02(16) (Vernon Supp.2008) (emphasis added). Chapter 729 refers to other provisions of the Transportation Code, including section 545.420, which is part of Subtitle C. See TEX. TRANSP. CODE ANN. §729.001(a) (Vernon Supp.2008).

The State alleged appellant engaged in delinquent conduct. Specifically, appellant was charged with the offense of drag racing and causing a person's death. TEX. TRANSP. CODE ANN. §545.420(a)(3) (Vernon Supp.2008). This is a second-degree felony. Id. §545.420(h) (Vernon Supp.2008). A person convicted of a second-degree felony shall be sentenced to two to twenty years imprisonment. TEX. PENAL CODE ANN. §12.33(a) (Vernon 2003).

Conclusion: Because appellant was charged with delinquent conduct that violates a penal law of this state, which is punishable by imprisonment or confinement in jail, the juvenile court has jurisdiction over his case. We hold that the trial court properly denied habeas corpus relief. We overrule appellant's sole issue.