

Review of Recent Juvenile Cases (2010)

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

Plea-bargain that required seventeen year old (minor) to voluntarily waive any right to an expunction in order to enroll in a pre-trial diversion program is binding on the minor. [In the Matter of the Expunction of D.R.R.](10-4-1)

On August 11, 2010, the El Paso Court of Appeals held that minors have the capacity to enter into contracts for pre-trial diversion programs, and as a result are bound by their conditions.

¶ 10-4-1. **In the Matter of the Expunction of D.R.R.**, No. 08-08-00064-CV, --- S.W.3d ----, 2010 WL 3169352 (Tex.App.-El Paso, 8/11/10).

Facts: This appeal centers on the filing of a petition to expunge the records of Appellee's arrest on November 29, 2002, for possession of marijuana. On November 28, 2007, a hearing was held regarding the expungement petition. The evidence adduced at the hearing revealed that Appellee, represented by counsel, and the State of Texas entered into an agreement whereby Appellee would enroll in a pre-trial diversion program, and upon completion of that program, the charge for possession of marijuana under two ounces would be dismissed. Appellant was seventeen years old at the time, and he was charged as an adult.

In order to enroll in the program, Appellee went to the offices of the Adult Probation Department to sign the requisite forms. He was not accompanied by counsel. There, he signed a document agreeing to participate in the pre-trial diversion program and to abide by certain conditions. The document also contained a provision indicating that if he successfully completed the pre-trial diversion program, he voluntarily waived any right to an expunction. Appellee signed his name, voluntarily agreeing to waive his right to expunction, beneath the provision. The last line of the document also recited that Appellee read and understood the document fully, and Appellee, indicating his understanding of the document, signed below that provision, as well.

Upon his successful completion of his participation in the pre-trial diversion program, the charge of possession of marijuana under two ounces was dismissed by the court. Appellee testified at the expunction hearing that he was unfamiliar with the word "expunction" when he signed the forms, and the rights that he waived were not explained to him. He stated that the purpose in seeking the expunction was to enlist in the United States Navy.

Noting that Appellee was only seventeen years old at the time he waived his right to expunction, the court believed that he did not have the capacity to contract for himself regarding that right. Thus, the court granted the petition for expunction.

Held: Reversed and expunction denied

Opinion: In its sole issue on appeal, the County asserts the court abused its discretion in granting Appellee's petition for expunction by ruling that Appellee lacked the capacity to contract; thereby invalidating his waiver of his right to expunge his criminal records. We review a trial court's ruling on a petition for expunction under an abuse of discretion standard. Ex

parte Jackson, 132 S.W.3d 713, 715 (Tex.App.-Dallas 2004, no pet.); see also Tex. Dep't of Pub. Safety v. J.H.J., 274 S.W.3d 803, 806 (Tex.App.-Houston [14th Dist.] 2008, no pet.).

Appellee was charged as an adult for committing the offense of possession of marijuana under two ounces. He was seventeen years old at the time of the offense. Section 8.07(b) of the Penal Code provides in relevant part:

Pre-trial diversion agreements, in our view, are akin to negotiated plea agreements, which have been equated to a contract. See *Ex parte Williams*, 637 S.W.2d 943, 948 (Tex.Crim.App.1982). Whereas plea bargaining consists of the prosecutor's concessions regarding punishment, lesser charges or reduction in counts in exchange for a defendant's plea of guilty or *nolo contendere*, see *id.* at 947, pre-trial diversion agreements generally consists of the prosecutor's agreement to drop the charges in exchange for the defendant's agreement to fulfill certain conditions within a specific period of time. *Fisher v. State*, 832 S.W.2d 641, 643 (Tex.App.- Corpus Christi 1992, no pet.). Under either action, each party simply agrees to give up some consequence in exchange for a benefit. See, e.g., *Bordenkircher v. Hayes*, 434 U.S. 357, 363, 98 S.Ct. 663, 668, 54 L.Ed.2d 604(1978) (explaining plea bargains "flow [] from 'the mutuality of advantage' to defendants and prosecutors, each with his own reasons for wanting to avoid trial"). Here, as part of this contract, Appellee agreed to waive his right to expunge his misdemeanor conviction in exchange for the prosecutor's dismissal of the case upon successful completion of the program. Thus, we believe that when a prosecutor and defendant enter into such agreements, they become parties to a contract that are operative. If either party fails to keep their side of the agreement, the proper relief is either specific enforcement or withdrawal of the agreement. See, e.g., *Williams*, 637 S.W.2d at 947.

Appellee contends that as a minor, one younger than eighteen, he could not make a contract or waive a legal right; accordingly, as his minority disability has not been removed, the waiver is voidable, and he has the option to disallow it. Appellee maintains that in invoking his right to set aside the contract, he has not cancelled out the entire agreement. He cites *Ex parte White*, 50 Tex.Crim. 473, 474, 98 S.W. 850, 851 (1906), for the proposition that his minority status allows him to plead guilty, but that same disability prevents him from entering into a contract, waiving his rights or forming a contract that may be in contravention of the law or public policy. However, the cited case stands for no more than the proposition that a minor may plead guilty to an offense. *Id.* Logically, if Appellee can disallow one portion of the contractual agreement, he can disavow any portion of the agreement. This cannot be the intent of the legislature in providing that one has adult status with regard to criminal liability at the age of seventeen. When one who becomes involved with the criminal justice system is considered in his or her majority at age seventeen, that majority status carries over into the attendant contractual agreements. We find that when Appellee entered into a bargain-for pre-trial diversion agreement, that is, a contract, legally at the age of seventeen, he was bound by that contract and its attendant provisions. He cannot absolve himself from those portions of the contract that he, at some later time, finds unsuitable.

We predicate this finding on the concept of estoppel by contract. A party who accepts benefits under a contract is estopped from questioning the contract's existence, validity, or effect. See *Rhodes v. State*, 240 S.W.3d 882, 891 (Tex.Crim.App.2007) (discussing such principle in a plea-bargain agreement). As is true with most contracts, it is typical that both parties to an agreement will benefit from the result. A defendant cannot enter an agreement, benefit therefrom, and then attack the agreement later when it is suddenly in his interests to do so. Issue One is sustained.

Conclusion: We reverse and render judgment denying Appellee's petition for expunction.