

The possibility of deportation upon a plea of true is not included in the Family Code's required admonishments for juveniles. [In the Matter of J.D.](13-3-9)

On July 10, 2013, the San Antonio Court of Appeals held that juvenile trial court's failure to provide an admonishment it was not statutorily required to give under the Family Code cannot be considered fundamental error.

¶ 13-3-9. **In the Matter of J.D.**, MEMORANDUM, No. 04-12-00792-CV, 2013 WL 3486826 (Tex.App.-San Antonio, 7/10/13).

**Facts:** In accordance with a plea bargain agreement, J.D. pled true to one count of aggravated sexual assault, and the trial judge assessed a determinate sentence of twenty years. On appeal, J.D. contends the trial court: (1) committed fundamental error in failing to admonish him regarding the immigration consequences of his plea; and (2) erred in denying his motion to quash.

**Held:** Affirmed

**Memorandum Opinion:** In his first issue, J.D. asserts the trial court committed fundamental error in failing to admonish him regarding the immigration consequences of his plea. J.D. cites article 26.13(a)(4) of the Texas Code of Criminal Procedure, which requires a trial court to admonish an adult defendant pleading guilty to an offense of the immigration consequences of his plea. TEX.CODE CRIM. PROC. ANN. art. 26.13(a)(4) (West Supp.2012). Although J.D. "readily acknowledged" in his brief, that no equivalent statutory admonishment is contained in the Juvenile Justice Code, J.D. argues that the admonishment should nevertheless be given.

The Texas Legislature has expressly determined which provisions of the Texas Code of Criminal Procedure are applicable to a juvenile proceeding, and article 26.13 is not among them. See TEX. FAM.CODE ANN. § 51.17 (West Supp.2012). In fact, the Texas Legislature has provided a separate set of admonishments a trial court is required to provide at the beginning of a juvenile adjudication hearing. TEX. FAM.CODE ANN. § 54.03 (West Supp.2012). As J.D. acknowledged in his brief, the possibility of deportation upon a plea of true is not included in these admonishments. See *id.*; see also *In re R.F.*, No. 07-02-0298-CV, 2003 WL 21404126, at \*1 (Tex.App.-Amarillo June 17, 2003, no pet.)(mem.op.) (concluding "trial court's failure to admonish appellant regarding deportation consequences in a juvenile proceeding did not violate his due process rights").

**Conclusion:** Accordingly, the trial court's failure to provide an admonishment it was not statutorily required to give cannot be considered fundamental error. See *Carranza v. State*, 980 S.W.2d 653, 656-57 (Tex.Crim.App.1998) (holding admonishments are statutorily, but not constitutionally, required). Moreover, as the State notes in its brief, the record contains a determinate sentence report stating that J.D. was born in San Antonio, Texas. Even in the context of a guilty plea by an adult defendant, a trial court's failure to admonish the defendant on the

immigration consequences of his plea is harmless error when the record establishes that the defendant is a United States citizen. *Van Nortrick v. State*, 227 S.W.3d 706, 709 (Tex.Crim.App.2007). J.D.'s first issue is overruled.