

## Year 2004 Case Summaries

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### ***The juvenile court did not abuse its discretion in rejecting a motion to withdraw a jury waiver [In re J.I.C.] (04-2-09).***

On March 26, 2004, the El Paso Court of Appeals, applying standards developed for criminal cases, held that the juvenile court did not abuse its discretion in refusing to permit the respondent to withdraw a waiver of jury trial.

04-2-09. In the Matter of J.I.C., UNPUBLISHED, No. 08-02-00239-CV, 2004 WL 596217, 2004 Tex.App.Lexis \_\_\_\_ (Tex.App.-El Paso 3/26/04) Texas Juvenile Law (5th Ed. 2000).

Facts: This is an appeal from the trial court's denial of a motion to withdraw the waiver of a jury trial. After a bench trial, the court found the juvenile guilty of engaging in delinquent conduct.

On March 26, 2002, J.I.C. was arrested for and charged with writing graffiti and evading arrest. On April 3, 2002, he signed a waiver of his right to jury trial. That same day, the trial court set J.I.C.'s case for a bench trial to begin April 17, 2002. On April 8, 2002, J.I.C. filed a motion to withdraw the jury waiver. This motion was heard on April 17, 2002 the day the bench trial was to begin, and the motion was denied. In denying the motion, the court stated that to reset the case would cause undue delay and a jury trial could not be heard until, "well into the month of May at least if not into June." The trial court, on the same day, rescheduled the bench trial to begin April 29, 2002. On April 22, 2002, about a week before trial was to begin, J.I.C. filed a motion to reconsider the motion to withdraw the jury waiver, which the trial court again denied. The bench trial began on April 29, 2002 and the court found J.I.C. had engaged in delinquent conduct and he was committed to the Texas Youth Commission. The disposition hearing was held on June 4, 2002, and J.I.C. was ordered to be committed to the Texas Youth Commission.

Held: Affirmed.

Opinion Text: In the juvenile's sole issue, he asserts the juvenile court abused its discretion by denying his request to withdraw his jury waiver. It is within the discretion of the trial court to grant or deny a motion to withdraw a jury waiver because such orders fall under the business of the court. *Marquez v. State*, 921 S.W.2d 217, 223 (Tex.Crim.App.1996). Unless there is an abuse of discretion, an appellate court will not reverse the denial of a motion to withdraw a jury waiver. *Id.* at 221-22. A trial court abuses its discretion when it acts without reference to guiding rules and principles. *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex.Crim.App.1990); *In re M.A.C.*, 999 S.W.2d 442, 446 (Tex. App.-El Paso 1999, no pet.).

Both the United States Constitution and the Texas Constitution guarantee a right to a trial by jury. U.S. Const. amend. VI; Tex. Const. art. I, § 15. This right remains "inviolable." Tex.Code Crim. Proc. Ann. art. 1.12 (Vernon 1977). In the context of a juvenile, a waiver of this right is prescribed by the Texas Family Code. To be valid, a waiver must (1) be made by the child and the attorney for the child; (2) the consequences of the waiver must be understood by both the attorney and the child; (3) be made voluntarily, and (4) it must be made in writing or in open court. Tex. Fam.Code Ann. § 51.09 (Vernon 2002). [FN1] If, however, one wishes to withdraw their jury waiver, Texas statutes do not provide defendants or judges a method by which to do so.

FN1. J.I.C. states in the brief submitted to this Court that the validity or voluntariness of the original waiver is not questioned.

In *Marquez*, the Texas Court of Criminal Appeals provided a framework by which a trial court may properly refuse a withdrawal of a jury waiver. *Marquez*, 921 S.W.2d at 223. The court reasoned that while a defendant has an absolute right to a trial by jury, once that right has been waived, the burden falls upon the defendant when he wants to change the status quo. *Id.* The trial court can therefore grant the motion for withdrawal if it is made in good faith and there are no adverse consequences. *Id.* at 221-22. The court additionally

held that a defendant should be allowed to withdraw his waiver if his request is made sufficiently in advance of trial such that granting the withdrawal will not: (1) interfere with the orderly administration of the business of the court, (2) result in unnecessary delay or inconvenience to witnesses, or (3) prejudice the State. Id. at 223. If the State, the trial court, or the record itself can rebut defendant's claims, then the trial court does not abuse its discretion in refusing to allow defendant to withdraw his jury waiver. Id.

Applying these standards to the case at hand, the trial court did not abuse its discretion in denying Appellant's motion to withdraw the jury waiver. J.I.C. asserts that while at first glance, the statement of the court that the denial of the motion was based upon undue delay might appear reasonable, this rationale lost all validity once the court vacated the setting for that day and reset the case for the 29th of April. However, Appellant neglects to cite the rest of the judge's words when giving the reason for resetting the trial. He denied the withdrawal because his "jury trials are well into the month of May at least if not into June." Appellant's argument that the trial judge lost its validity when he set the trial for a later date does not show a lack of adverse consequences. Clearly, granting Appellant's motion to withdraw the jury waiver would have adverse consequences to the court because trying to get a jury would have delayed the courts docket thus interfering with the "orderly administration of the business of the court." Id. Appellant did not show otherwise. It therefore does not become incumbent upon the state or the court to rebut "obvious facts" and identify adverse consequences. We overrule the sole issue on review.

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