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## YEAR 2005 CASE SUMMARIES

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By  
**The Honorable Pat Garza**

Associate Judge  
386th District Court  
San Antonio, Texas

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### **Failure to raise jurisdictional objections prior to plea of guilty waives them for appeal. [Mays v. State](05-3-1)**

**On May 19, 2005, the Houston Court of Appeals [1<sup>st</sup> Dist.] held that when appellant pleaded guilty without objecting to transfer of jurisdiction from juvenile court to district court, he failed to preserve any complaint for appeal.**

05-3-1. Mays v. State, UNPUBLISHED, No. 01-03-01345-CR, 2005 Tex. App. Lexis 3842 (Tex.App.—Houston [1<sup>st</sup> Dist.] 5/19/05).

Facts: Appellant was indicted in the 313th District Court of Harris County, a juvenile court, because he was sixteen years old, and was subsequently certified in an order waiving jurisdiction in case number 2002-05597J-Amended to the 351st District Court so that he could be tried as an adult. The 351st District Court of Harris County assumed jurisdiction by order over the defendant in case number 2002-04919J-Amended.

Appellant thereafter pleaded guilty to aggravated robbery, a first degree felony, on January 21, 2003, in the 351st District Court, and the judge ordered a presentence investigation report (PSI) be conducted prior to sentencing on October 16, 2003. The PSI recounted the facts of the crime as described above, as well as appellant involvement in previous crimes, including a car theft in which he pleaded guilty to evading arrest, a charge of trespass on school property, and a charge of assault. Appellant filed a motion requesting punishment be assessed at community supervision in light of his age. In support of that request, appellant submitted twelve letters detailing his remorse, strong moral character, and religious involvement; his school transcripts, which indicated that he was a good student; and informational letters from colleges that had expressed interest in him. At the sentencing hearing on December 3, 2003, the judge assessed appellant's punishment at forty-five years' confinement, and appellant perfected this appeal.

Held: Affirmed

Memorandum Opinion: In his first point of error, appellant complains that the 351st District Court did not properly obtain jurisdiction over his aggravated robbery charge because the order signed by the 313th District Court, a juvenile court, waiving jurisdiction over appellant did not correspond with the order signed by the 351st District Court assuming jurisdiction. The juvenile court entered its order waiving jurisdiction over appellant in cause number 2002055971J-Amended and the 351st District Court entered its order assuming jurisdiction over appellant in cause number 2002-04919J-Amended. The crux of appellant's complaint is that the two numbers in the orders that waive and assume jurisdiction are in

conflict, and, therefore, the 351st District Court never obtained proper jurisdiction over appellant.

The legislature has addressed jurisdictional objections involving the certification of juveniles from juvenile court to criminal district court by statute. *See TEX. CODE CRIM. PROC. ANN. art. 4.18* (Vernon 2005). Specifically, *article 4.18(a)* provides that a claim alleging that a district court or criminal district court does not have jurisdiction over a person because jurisdiction is exclusively in the juvenile court must be made by written motion in bar of prosecution filed with the court in which criminal charges against the defendant are filed. Further, the motion must be filed and presented to the presiding judge of the court before the defendant enters a plea of guilty or no contest. *TEX. CODE CRIM. PROC. ANN. art. 4.18(b)(1)*. A person who does not file a motion within the time requirements of the statute may not contest the jurisdiction of the court on the ground that exclusive jurisdiction rests with the juvenile court. *TEX. CODE CRIM. PROC. ANN. art. 4.18(d)(1)*.

A plain reading of the statute indicates that jurisdictional objections must be made to the district court before entering a plea or they are waived. *See TEX. CODE CRIM. PROC. ANN. art. 4.18*. In *Rushing v. State*, the Court of Criminal Appeals unequivocally stated that *article 4.18* prevents a jurisdictional objection from being asserted in any context if the statute's preservation requirements are not met. *Rushing v. State*, 85 S.W.3d 283, 286 (Tex. Crim. App. 1996). The failure to object to the district court regarding its jurisdiction before any plea of guilty does not comport with the time restrictions dictated by the statute. *Id.* Therefore, a party who has not objected to the district court may not seek redress for jurisdictional errors on appeal. *Id.*; *see also Miller v. State*, 981 S.W.2d 447 (Tex. App.--Texarkana 1998, *pet. ref'd*) (holding that defendant could not challenge that jurisdiction was not properly certified by juvenile court to district court due to inconsistencies in the indictment because he failed to object prior to trial adjudicating guilt in district court); *Robles v. State*, 2004 Tex. App. LEXIS 4522, No. 13-02-726-CR, 2004 WL 2335195, at \*2 (Tex. App.--Corpus Christi 2004, *no pet.*) (finding that when appellant pleaded guilty to offense charged without objecting to transfer of jurisdiction from juvenile court to district court, he failed to comply with *article 4.18*'s time requirements and therefore failed to preserve any complaint for appeal).

Under the current facts, appellant seeks reversal by arguing that the district court never obtained proper jurisdiction because of a numbering conflict between the juvenile court's order waiving jurisdiction and the district court's order assuming jurisdiction. This is a jurisdictional challenge to a juvenile court certification and is controlled by *article 4.18*. However, appellant points to no evidence in the record where he made any objection to the district court asserting a jurisdictional challenge. Appellant failed to raise any jurisdictional objections to the district court prior to his plea of guilty as required by *article 4.18*. *Id.* Therefore, appellant failed to preserve any jurisdictional objection for appeal. *See Rushing* 85 S.W.3d at 286.

Conclusion: Point of error overruled. Judgement Affirmed