
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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When the oral pronouncement of a sentence in open court conflicts with the written judgment, the oral pronouncement controls.[In the Matter of C.L.W.](06-1-19B)

On February 13, 2006, the Dallas Court of Appeals concluded that while the adjudication order conflicted with the oral pronouncement, the disposition order accurately reflects the trial court's pronouncement of commitment to TYC and upheld commitment.

¶ 06-1-19B. **In the Matter of C.L.W.**, MEMORANDUM, No. 05-05-00754-CV, No. 05-05-00776-CV, No. 05-05-00777-CV, No. 05-05-00778-CV, No. 05-05-00779-CV, 2006 Tex.App.Lexis 1152 (Tex.App.— Dallas, 2/13/06).

Facts: In 2003, appellant was adjudicated a child engaged in delinquent conduct by committing burglary of a building (05-05-00754-CV), criminal trespass (05-05-00776-CV), unauthorized use of a vehicle (UUMV) (05-05-00777-CV), and making a false report (05-05-00779-CV). The trial court placed appellant on probation until his eighteenth birthday. The four cases were heard in a single proceeding.

A year later, the State filed motions to modify disposition in each case, alleging appellant had committed new offenses. Following a hearing, the trial court found appellant had violated the terms of his probation, sustained the State's motions to modify, and committed appellant to TYC in each case. In the same proceeding, the trial court adjudicated appellant a child engaged in delinquent conduct by committing theft of property valued at \$ 500 or more but less than \$ 1500 (05-05-00778-CV). The trial court committed appellant to TYC in the theft case, as well.

Held: Affirmed as modified in part, Reversed and Remanded in part

Memorandum Opinion: In his second point of error, appellant argues his commitment to TYC should be reversed because the disposition order conflicts with the adjudication order. Appellant relies on the fact that the adjudication order says he is "hereby placed on probation" whereas the disposition order commits him to TYC. The State responds that appellant has inadequately briefed the issue and, alternatively, the disposition order is the final authority of the trial court's decision.

Appellant did not cite any authority supporting his position, but did cite *In re G.A.O.*, 854 S.W.2d 710 (Tex. App.-San Antonio 1993, no pet.), as one authority contrary to his position. Although not addressing identical issues, the court in *In re G.A.O.* stated that the disposition order "is recognized by this court as final authority as to the court's decision." *See id.* at 714 n.5.

Here, appellant claims that because the adjudication order places him on probation and the disposition order commits him to TYC, the disposition order should be reversed. We disagree. When the oral

pronouncement of a sentence in open court and the written judgment conflict, the oral pronouncement controls. *See Thompson v. State*, 108 S.W.3d 287, 290 (Tex. Crim. App. 2003); *Smith v. State*, 176 S.W.3d 907, 920 (Tex. App.-Dallas 2005, no pet.). The record shows the trial judge orally pronounced the disposition with commitment to TYC. The adjudication order conflicts with the oral pronouncement, but the disposition order accurately reflects the trial court's pronouncement. We overrule appellant's second point of error.

We modify the trial court's adjudication order to reflect that appellant was committed to TYC. *See TEX. R. APP. P. 43.2(b)*; *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.-Dallas 1991, pet. ref'd).

Conclusion: As modified, we affirm the trial court's orders modifying disposition with TYC commitment.