

Review of Recent Juvenile Cases (2011)

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

Appellant's plea of true to the enhancement paragraph is alone sufficient to show that he had a prior felony conviction.[Menson v. State](11-1-8)

On February 16, 2011, the Amarillo Court of Appeals concluded that an appellant's plea of true precludes his complaint about the insufficiency of the evidence to establish his enhancement paragraph.

¶ 11-1-8. Menson v. State, MEMORANDUM, No. 07-09-0331-CR, --- S.W.3d ----, 2011 WL 534487 (Tex.App.-Amarillo, 2/16/11).

Facts: Kalmine Shanell Menson (appellant) appeals the punishment portion of his conviction for aggravated assault. Through one issue, appellant contends that the evidence is legally insufficient to support the enhancement paragraph.

Appellant was charged with aggravated assault, enhanced. He pled guilty and was placed on six years deferred adjudication probation. Subsequently, the State filed a motion to adjudicate appellant's guilt. At the hearing, appellant entered pleas of not true to the allegations contained in the motion. Evidence was presented by both the State and appellant after which the trial court adjudicated appellant guilty. Appellant appeals this determination.

According to the record, the trial court admonished appellant as follows: "[Appellant], you are charged by an information ... what would normally be a second-degree felony of aggravated assault with a deadly weapon, but ... in the information there's an allegation of a previous conviction in Tarrant County, Texas, that enhances the punishment making it a first-degree felony. Do you understand the charge?" Appellant stated that he did. The court further admonished appellant about the range of punishment for both a second degree felony and a first degree. Next, the trial court asked appellant how he was pleading to the information and appellant pled guilty. Furthermore, the clerk's record contained a judicial confession wherein appellant confessed to the charge contained in the information and the enhancement. Moreover, the trial court reviewed the judicial confession with appellant and questioned him as to his understanding of the confession and that he was admitting to everything contained in the information. Specifically, the court asked appellant if he had "read the enhancement paragraph wherein it says that in 1998, you were convicted in Tarrant County, Texas, in the district court there of aggravated robbery," and appellant answered in the affirmative and then pled true to the enhancement.

Appellant, in his brief, admits that all potential areas raised by this court have been addressed except for the fact that appellant's prior conviction was as a juvenile and as such is barred from use as an enhancement. This is so according to appellant because juvenile convictions committed prior to 1996 are statutorily barred from such use. And, even though the enhancement paragraph stated the conviction occurred in 1998, nothing of

record shows that the offense had not been committed in 1996. Therefore, the State failed to prove this element.

Held: Affirmed (Per Curiam)

Memorandum Opinion: However, appellant pled true to the enhancement paragraph. Appellant's plea of true to the enhancement paragraph is alone sufficient to show that he had a prior felony conviction. See *Dinn v. State*, 570 S.W.2d 910, 915 (Tex.Crim.App.1978); *Hall v. State*, 137 S.W.3d 847, 856 (Tex.App.-Houston [1st Dist.] 2004, pet. ref'd). Therefore, we conclude that appellant's plea of true precludes his complaint about the insufficiency of the evidence to establish his enhancement paragraph. See *Dinn v. State*, 570 S.W.2d at 915; *Hall v. State*, 137 S.W.3d at 856.

Conclusion: Accordingly, we affirm the judgment of the trial court.