

Review of Recent Juvenile Cases (2011)

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

Retroactive sex offender's de-registration order did not affect supervision requirements for a juvenile who was already on probation for violating sex offender's registration requirements.[Cornell v. State](11-2-3)

On March 10, 2011, the Fort Worth Court of Appeals held that appellant could not challenge his original placement on community supervision for violating sex offender registration requirements, after that community supervision had been revoked, with a later juvenile court order attempting to excuse appellant from registering retroactively.

¶ 11-2-3. Cornell v. State, MEMORANDUM, No. 02-10-00056-CR, 2011 WL 856910 (Tex.App.-Fort Worth, 3/10/11).

Facts: When he was a juvenile, appellant was adjudicated delinquent for an offense that would require him to register as a sex offender. On June 1, 2006, he was indicted for violating the registration statute. Tex.Code Crim. Proc. Ann. art. 62.102(a) (Vernon 2006). He pled guilty to the offense on October 12, 2006; the trial court sentenced him to two years' confinement but suspended the sentence and placed appellant on community supervision.

A month later, on November 13, 2006, appellant filed a motion with the juvenile court asking to be excused from registering as a sex offender. The juvenile court signed an order excusing appellant from registering as a sex offender, which order was entitled, "Sex Offender Registration Order Registration Excused Retroactively [de-registration]." The order does not specifically say, however, that appellant was retroactively excused from registering. Because of that order, appellant stopped registering. However, neither appellant nor his attorney at that time [FN2] moved the trial court to terminate his community supervision.

FN2. Appellant's attorney in the juvenile court was not the same counsel who represents appellant on appeal and who also represented appellant at trial in this cause number.

On October 15, 2009, the State filed a motion to revoke appellant's community supervision alleging that appellant had violated his community supervision by driving while intoxicated, consuming alcohol, refusing to give a blood or breath specimen, having a positive urine test for THC, and by failing to complete four hours per week of community service restitution. Appellant pled true to the allegations in the motion on November 19, 2009, and the trial court sentenced him to nine months' confinement in state jail. Appellant's trial and appellate counsel received a fax on December 8, 2009 from a family member of appellant with the juvenile court's de-registration order attached. Appellant's counsel had not been aware of the order until then. Appellant's counsel timely filed a motion for new trial, which the trial court denied after a hearing.

In his first issue, appellant contends that the trial court did not have jurisdiction to revoke his community supervision.

Held: Affirmed

Memorandum Opinion: Generally, an appellant may not raise issues related to the trial court's placement of the appellant on community supervision in appeals filed after that community supervision is revoked. *Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex.Crim.App.1999). There are two exceptions to this rule: the void judgment exception and the habeas corpus exception. *Nix v. State*, 65 S.W.3d 664, 667 (Tex.Crim.App.2001). Appellant argues that the void judgment exception applies here.

"The void judgment exception recognizes that there are some rare situations in which a trial court's judgment is accorded no respect due to a complete lack of power to render the judgment in question." *Id.* "A void judgment is a 'nullity' and can be attacked at any time." *Id.* at 667-68. In other words, to avoid the Manuel rule, the trial court must have had no power to render the initial community supervision order. *Id.* at 668. A judgment is void when (1) the document purporting to be a charging instrument does not satisfy the constitutional requisites of a charging instrument, (2) the trial court lacks subject matter jurisdiction over the offense charged, (3) there is no evidence to support the conviction, or (4) an indigent defendant who has not waived the right to counsel is forced to face criminal proceedings without counsel. *Id.*

Conclusion: The juvenile court's order excusing appellant from registering as a sex offender did not exist at the time the trial court placed appellant on community supervision. Even if we were to construe the juvenile court's order as attempting to excuse appellant from registering retroactively, appellant has not cited any authority giving the juvenile court the ability to make such an order retroactive. See Tex.Code Crim. Proc. Ann. arts. 62.351-.53 (Vernon 2006). None of the void judgment scenarios listed above apply. Moreover, appellant's counsel admitted at the motion for new trial that the trial court had jurisdiction to place appellant on community supervision in October 2006. Accordingly, we conclude and hold that the void judgment exception does not apply and, thus, that appellant cannot challenge his original placement on community supervision in this appeal. See *Nix*, 65 S.W.3d at 668.

Accordingly, we overrule appellant's first issue.