

Juvenile Law Case Summaries

By
Robert O. Dawson
Bryant Smith Chair in Law
University of Texas School of Law

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Criminal sentence enhanced by juvenile felony adjudication and commitment [Franklin v. State] (01-1-20).

On February 21, 2001, the Texarkana Court of Appeals held that a juvenile felony adjudication and commitment to TYC were properly used in a criminal trial to enhance punishment from a second to a first degree felony.

¶ 01-1-20. Franklin v. State, UNPUBLISHED, No. 06-00-00121-CR, 2001 WL 169773, 2001 Tex.App.Lexis ____ (Tex.App.—Texarkana 2/21/00) [Texas Juvenile Law (5th Edition 2000)].

Facts: Antwain Franklin appeals his conviction for possession of cocaine in an amount greater than four grams but less than 200 grams. Franklin was alleged to have been in possession of a shoebox containing 27.85 grams of crack cocaine and 66 cigars which had been hollowed out and had the tobacco replaced with marihuana. A jury convicted Franklin, and he pleaded true to an enhancement allegation. The jury found the enhancement allegation true and assessed punishment at forty years' confinement.

Franklin's attorney has filed an appellate brief in which he concludes after a review of the record and the related law, that the appeal is frivolous and without merit. He has performed a professional evaluation of the record and has found no error that arguably supports an appeal. The brief thus meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and *Stafford v. State*, 813 S.W.2d 503 (Tex.Crim.App.1991). Franklin did not file a pro se response. In his *Anders* brief, Franklin's attorney raises several issues, but concludes that each of them is without merit.

Held: Affirmed.

Opinion Text: Franklin's counsel on appeal also raises an issue regarding the evidence used to prove the State's enhancement allegation. Franklin was convicted of possession of cocaine in an amount greater than four grams but less than 200 grams, a second degree felony. Tex. Health & Safety Code Ann. § 481.115(d) (Vernon Supp.2001). As an enhancing offense, the State alleged that Franklin was adjudicated in a juvenile court to have engaged in delinquent conduct constituting a felony offense for which he was committed to the Texas Youth Commission. Under Tex. Pen.Code Ann. § 12.42(b), (f) (Vernon Supp.2001), such a juvenile adjudication can be used to enhance a second degree felony to a first degree felony.

The State introduced into evidence certified copies of the Order of Adjudication and the Order of Dispositional Commitment to the Texas Youth Commission to prove the enhancement allegation. Such evidence is admissible in the punishment phase under Tex.Code Crim. Proc. Ann. art. 37.07, § 3(a) (Vernon Supp.2001) and was properly admitted under the public records exception to the hearsay rule. See Tex.R. Evid. 803(8). Even if these documents were not properly admitted, Franklin waived any error by pleading true to the State's enhancement allegation. Thus, we agree with Franklin's counsel on appeal that this issue is without merit.

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