

Juvenile Law Case Summaries

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Certified juvenile entitled to credit on prison sentence for time spent in juvenile detention before transfer [Delgado v. State] (02-1-17).

On January 10, 2002, the Houston Fourteenth District Court of Appeals held that a certified juvenile is entitled to credit on his prison sentence for time he spent in juvenile detention before certification to criminal court.

DISCRETIONARY TRANSFER PROCEEDINGS-

CERTIFIED JUVENILE ENTITLED TO CREDIT ON PRISON SENTENCE FOR TIME IN JUVENILE DETENTION BEFORE TRANSFER

02-1-17. Delgado v. State, UNPUBLISHED, No. 14-00-01238-CR, 2002 WL 27297, 2002 Tex.App.Lexis ____ (Tex.App.--Houston [14th Dist.] 1/10/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Appellant, Dennis Anthony Delgado, appeals his conviction of the offense of manslaughter. Appellant was charged by indictment with murder and manslaughter. A jury convicted him of the offense of manslaughter and assessed punishment at twenty years' confinement in the Institutional Division of the Texas Department of Criminal Justice. Appellant asserts three points of error on appeal.

On September 30, 1996, Christopher Vasquez, Rodrigo Benitez, and Ramiro Gonzalez were driving in Rodrigo's Blazer. Rodrigo was driving, Ramiro was in the front passenger seat, and Christopher was in the back seat. All three males were members of the Riverview Bloods Gang. At approximately 7:30 p.m., they were traveling south in the right lane on the feeder road at Interstate 45 and Griggs Road. Rodrigo saw a blue Cadillac drive up along the left side of their vehicle. They heard a gun discharge. Rodrigo and Ramiro turned around and saw that Christopher had been shot in the neck. The Cadillac sped by and Rodrigo pulled in to a store at the corner and called an ambulance and the police.

Officer White heard a description of the Cadillac over the radio. He noticed a vehicle matching the description and pulled it over. Courtney Steve Turner, the driver, immediately got out of the car with his hands up. The rest of the vehicle's occupants were removed from the car by officers at the scene. Andre Trevino was in the front passenger seat. John Sorola was seated in the back seat on the driver's side. Appellant was in the back seat on the passenger's side. Officers found a 12 gauge shotgun in the back seat of the Cadillac and a shotgun shell outside the vehicle on the passenger side.

Courtney Steve Turner's Testimony

Courtney testified that he met "these guys" through a member of their gang, the Southeast Crips. On the night in question, Courtney picked up Andre, John, and appellant. He testified that he did not see any guns in the car when appellant got in. As they drove down the feeder road and approached Rodrigo's Blazer, Courtney said appellant yelled "They're Riverview," and John threw gang signs at the Blazer. Next, he heard a blast and when he turned around he saw appellant pulling a shotgun into the car and smoke coming from the barrel. Courtney immediately pulled over and told John, Andre, and appellant to get out of his car. He said that their response was: "You better go. We thought you were down with us." Courtney decided to keep driving. Courtney testified that before they were pulled over by the police appellant stated: "We got that slob." When they were being pulled over, everyone in the car warned Courtney not to say anything.

Andrea Patino's Testimony

Andrea Patino, a friend of appellant's sister, testified that she overheard Andre bragging about how had he killed a guy named Chris.

She also heard Andre talking about how he "blew Chris' head off and how the cops were so stupid because he was getting away with it."

Jack Howsley's Testimony

Jack Howsley testified that he asked Andre about the shooting and Andre told him that he "got out," and he "beat it."

Angela Delgado's Testimony

Angela Delgado, appellant's sister, testified that she saw appellant leave her house that night when Courtney, Andre, and John picked him up. She said appellant was not carrying anything when he left.

Appellant's Testimony

According to appellant, he was in the Cadillac with his brother, Michael Enriquez, John Sorola, and Andre Trevino. Appellant testified that he was rolling a joint when the Cadillac exited Interstate 45 at Griggs. Appellant heard John say that the guys in the Blazer were the guys that "got" his friend Rudy. Then, Andre said "fuck Bloods," shot one time, and threw the gun in the back seat. Before they were pulled over, Courtney stopped to let Michael out of the car. The remaining passengers discussed who was going to take the blame for shooting the Blazer. Appellant testified that the gun belonged to Andre, but he agreed to take the blame for it because nobody else would, and Andre was already on probation and did not want to go back to prison. Appellant said he did not know the gun was in the car before the shooting, and he did not encourage or assist Andre. He also said that when he agreed to take the blame for the gun he did not know someone had been shot. However, when he gave a statement to the police admitting the gun was his, he was aware Christopher had been shot.

POINTS OF ERROR PRESENTED ON APPEAL

Appellant asserts three points of error on appeal: (1) the trial court erred in overruling appellant's objection to the jury charge regarding an instruction on the law of parties; (2) the evidence is legally insufficient to sustain appellant's conviction; and (3) the trial court erred in refusing to give appellant credit for time he spent in juvenile detention.

Held: Affirmed in part and reversed and remanded in part.

Opinion Text: III. CREDIT FOR TIME SPENT IN JUVENILE DETENTION

In his final point of error, appellant argues the trial court erred by not giving him credit for time he spent in juvenile detention prior to his certification as an adult. The State argues that the record on appeal is insufficient to show error.

The record reflects the following discussion between appellant's attorney and the court:

Appellant's Attorney: Your Honor, will the Court be giving him credit for the time he spent in juvenile detention after September 30th, 1996? He was in custody--in juvenile custody through the date of certification.

The Court: There's an affirmative finding in that. Am I required to?

The State: You're not required to do so, sir.

The Court: I'll not give him credit for his time.

Appellant's Attorney: He was taken into custody on September 30th, 1996, until--

The Court: I'll give him credit for every day that he's entitled to under the law. And if I'm not required to give him credit for juvenile time, I shall not.

A defendant is entitled to credit for time of confinement from the time of his arrest and confinement until he is sentenced by the trial court. Tex.Code Crim. Pro. Ann. art. 42.03, § 2(a) (Vernon Supp.2001). The State concedes that a defendant who is initially detained as a juvenile and later certified as an adult is entitled to credit for time of confinement, including time spent in a juvenile detention facility before certification. Ex Parte Gomez, 15 S.W.3d 103, 103-04 (Tex.Crim.App.2000) (citations omitted). As appellant was initially detained as a juvenile and later certified as an adult, he is entitled to have his sentence credited for the time he spent in juvenile detention before certification.

The record reflects that appellant was placed in juvenile detention on October 1, 1996. On April 3, 1997, trial court signed an order certifying appellant as an adult. Appellant was transferred to Harris County Jail the next day. The record does not reflect when or if appellant was released on bond from Harris County Jail. At sentencing, the trial court credited appellant's sentence for 104 days, but did not specify the basis for that determination. The record does not reflect how much time appellant spent confined in Harris County Jail, but it does show appellant spent more than 104 days confined in juvenile detention. Therefore, the trial court's order does not reflect the correct amount of time appellant's sentence should be credited for: the time appellant spent confined in juvenile detention and Harris County Jail.

An appellate court may reform a judgment to reflect credit for time served if the necessary information is before the court. *Stokes v. State*, 688 S.W.2d 539, 542 (Tex.Crim.App.1985) (citing *Knight v. State*, 581 S.W.2d 692 (Tex.Crim.App.1979); *Wilson v. State*, 240 S.W.2d 774 (1951)). Based on the record before us, we do not know how much time appellant spent confined in Harris County Jail. Therefore, we cannot calculate how much time appellant's sentence should be credited for. We sustain appellant's third point of error, but we deny appellant's request to modify the judgment because we do not have all of the necessary information to do so. Instead, we remand this cause to the trial court and we instruct it to determine how much time appellant was confined in juvenile detention and in Harris County Jail, from the time of his arrest and confinement until his sentence, and modify appellant's sentence to reflect a credit for the total time appellant was confined.

CONCLUSION

We overrule appellant's first and second points of error, and sustain appellant's third point of error. We remand this cause to the trial court for further proceedings consistent with this opinion.

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