

Juvenile Law Case Summaries

By

Robert O. Dawson

Bryant Smith Chair in Law
University of Texas School of Law

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***Failure to object or file motion for new trial waives claim on appeal that judge was biased in modification proceedings
[Tatum v. State] (02-2-06).***

On March 11, 2002, the Tyler Court of Appeals held that the juvenile respondent had by failure to object or file a motion for new trial waived a claim that the juvenile court judge by his remarks demonstrated bias against the juvenile in disposition modification proceedings.

02-2-06. Tatum v. State, UNPUBLISHED, No. 12-01-00189-CV, 2002 WL 428335, 2002 Tex.App.Lexis ____ (Tex.App.-Tyler 3/11/02) [Texas Juvenile Law (5th Edition 2000).

Facts: Appellant Bryant Tatum appeals the trial court's order modifying and revoking his previous placement on probation and subsequent commitment to the Texas Youth Commission. In one issue, Appellant complains that he was denied his due process rights of a hearing before a fair and impartial tribunal.

Held: Affirmed.

Opinion Text: In 1999, Appellant was adjudicated as a delinquent child, at which time he was placed on probation until his eighteenth birthday. In 2001, the State filed a Petition to Modify Disposition. At a hearing on the petition, Appellant pleaded true to multiple allegations in the State's motion. At the conclusion of the hearing, the trial court modified Appellant's probation and committed Appellant to the Texas Youth Commission. On appeal, Appellant contends that the trial court based his ruling on evidence outside the record.

Appellant cites State v. Kemp, 846 S.W.2d 289 (Tex.Crim.App.1992) for the proposition that a defendant is denied due process where a judge exhibits bias that stems "from an extra-judicial source and [that results] in an opinion on the merits on some basis other than what the judge learned from his participation in the case." Id. at 306. Appellant asserts that the following statement by the trial judge when he made the ruling in the present case proves just such a bias.

Mr. Tatum, I've said for months in this courtroom, every time I turned around it was a juvenile case and you know whose name they were pointing at? Yours and your brother's. Now, whether you were this mastermind of these upteen hundred felonies, I don't know, but let me tell you, you were the fault for every plea I've heard. Not one, not two, three, four, five, six, I don't know how many kids came in here and said, Well, I was just following Bryant and Billy Tatum.

We are unable to address the merits of the argument, however, because Appellant failed to preserve error on this issue.

Texas Rule of Appellate Procedure 33.1 provides in part that "as a prerequisite to presenting a complaint for appellate review," a timely request, objection or motion must be made and ruled upon by the trial court. This rule ensures that trial courts are provided an opportunity to correct their own mistakes at the most convenient and appropriate time--when the mistakes are alleged to have been made. See Vidaurri v. State, 49 S.W.3d 880, 886 (Tex.Crim.App.2001); Aguilar v. State, 26 S.W.3d 901, 905-06 (Tex.Crim.App.2000). The same rule applies to allegations of due process violations in juvenile cases. Hull v. State, 2002 Tex.Crim.App. LEXIS 16, at *5-7 (Tex.Crim.App. Jan. 30, 2002). In the case before us, Appellant neither objected at the hearing after the judge made the allegedly biased ruling, nor filed a motion for new trial. Consequently, he failed to preserve the issue for appellate review. Accordingly, we affirm.

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