Juvenile Law Case Summaries

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

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The affirmative finding punishment scheme for group bias is not facially unconstitutional [In re M.P.] (03-1-13).

On December 31, 2002, the San Antonio Court of Appeals held that the provision in the Penal Code enhancing punishment upon an affirmative finding of group bias in selecting the victim is not facially unconstitutional.

03-1-13. In the Matter of M.P., UNPUBLISHED, No. 04-01-00364-CV, 2002 WL 31890890, 2002 Tex.App.Lexis ___ (Tex.App.-San Antonio 12/31/02) Texas Juvenile Law (5th Ed. 2000).

Facts: Appellant, minor child M.P., was charged with the offense of engaging in delinquent conduct, specifically graffiti, pursuant to Section 28.08 of the Texas Penal Code. The State filed notice of intent to seek an affirmative finding that the offense was committed because of bias or prejudice under Texas Code of Criminal Procedure art.42.014 and Texas Penal Code § 12.47. Appellant pled not true and filed a motion to quash, challenging the constitutionality of the above cited statutes. The court denied the motion. Following a jury trial, appellant was convicted of engaging in delinquent conduct. The trial court made a finding that appellant had selected the victim on the basis of race and sentenced him to the Texas Youth Commission until his 21st birthday. Appellant now challenges the trial court's sentencing order, claiming his due process rights were violated and reasserting his position that article 42.014 of the Texas Code of Criminal Procedure [FN1] and § 12.47 of the Texas Penal Code [FN2] are facially unconstitutional under both the United States and Texas Constitutions.

FN1. At the time of appellant's offense and at the time of his trial, Article 42.014 provided:

In the punishment phase of the trial of an offense under the Penal code, if the court determines that the defendant intentionally selected the victim primarily because of the defendant's bias or prejudice against a group, the court shall make an affirmative finding of that fact and enter the affirmative finding in the judgment of that case.

Article 42.014 has since been amended.

FN2. At the time of appellant's offense and at the time of his trial, § 12.47 provided:

If the judge or jury, whichever assesses punishment in the case, makes an affirmative finding under Article 42.014, Code of Criminal Procedure, in the punishment phase of the trial of an offense other than a first degree felony or a Class A misdemeanor, the punishment for the offense is increased to the punishment prescribed for the next highest category of offense. If the offense is a class A misdemeanor, the minimum term of confinement for the offense is increased to 180 days.

§ 12.47 has since been amended.

Held: Affirmed.

Opinion Text: When reviewing an attack upon the constitutionality of a statute, the court begins with a presumption that the statute is valid and the Legislature has not acted unreasonably or arbitrarily. Luquis v. State, 72 S.W.3d 355, 365 n. 26 (Tex.Crim.App.2002); Ex parte Granviel, 561 S.W.2d 503, 511 (Tex.Crim.App.1978); Ex parte Ports, 21 S.W.3d 444, 446 (Tex.App. San Antonio 2000, pet. ref'd). The burden rests upon the individual who challenges the statute to establish its unconstitutionality. Ports, 21 S.W.3d at 446. In the absence of contrary evidence, we will presume the Legislature acted in a constitutionally sound fashion.

In Apprendi v. New Jersey, 530 U.S.466 (2000), the Supreme Court considered the constitutionality of the New Jersey hate crimes statute. Under the statute a jury could convict a defendant of a second degree offense based on its finding, beyond a reasonable

doubt, that he unlawfully possessed a prohibited weapon. After a subsequent proceeding, the statute permitted a trial judge to impose punishment for a first degree offense based on the judge's finding, by a preponderance of the evidence, that the defendant's purpose for possessing the weapon was motivated by bias against a characteristic of the victim. The Supreme Court held the New Jersey statute to violate due process, finding it unconstitutional for a legislature to remove from the jury the assessment of facts (aside from a prior conviction) which increase the prescribed range of penalties to which a criminal defendant is exposed. Apprendi, 530 U.S. at 490.

The effect of the statutes challenged in the case at hand is remarkably similar to the effect of the statute struck down in Apprendi. In fact, the Texas Court of Criminal Appeals has already found the challenged statutes to violate due process under the United States and Texas Constitutions. [FN3] See Ex parte Boyd, 58 S.W.3d 134, 136 (Tex.Crim.App.2001). However, the Court's holding in Boyd was predicated upon the manner in which the statute was applied to the appellant in that case. The Court of Criminal Appeals found the statutes challenged in Boyd to be unconstitutional because they increased the prescribed range of penalties to which the particular appellant was exposed without submitting the issue to the jury. Boyd, 58 S.W.3d at 136. The Court did not, however, address the issue of whether the statutes were facially unconstitutional. Because of the reasoning utilized in Apprendi and Boyd, the cases are not analogous to the case at hand.

FN3. Although the wording of the version of § 12.47 which the Court found unconstitutional in Boyd differs slightly from the version applicable to appellant, the effect is the same.

In a facial challenge, as opposed to an as applied challenge, the challenging party contends that the statute, by its terms, always operates unconstitutionally. Wilson v. Andrew, 10 S.W.3d 663, 670 (Tex.1999); Tex. Workers' Comp. Comm'n v. Garcia, 893 S.W.2d 504, 518 (Tex.1995). Although the standard regarding facial challenges to state statutes has been the subject of debate within the United States Supreme Court, Washington v. Glucksberg, 521 U .S. 702, 739 (1997). (Stevens, J. concurring), several Texas courts have chosen to follow the standard set forth in United States v. Salerno, 481 U.S. 739, 745 (1987). In Salerno, the Supreme Court found a facial challenge to be the most difficult to succeed because the challenger must establish that no set of circumstances exists under which the act would be valid. Id.; In re B.S.W., 87 S.W.3d 766, 771 (Tex.App. Texarkana 2002, pet. filed).

The appellant in this case has failed to demonstrate that Texas Code of Criminal Procedure art. 42.014 and Texas Penal Code § 12.07 may never be applied in a constitutional fashion. For example, appellant has neglected to address the situation in which a judge, rather than a jury, is the trier of fact. As the trier of fact, the judge would be entitled to make the determination regarding whether appellant selected his victim on the basis of race. Because appellant has failed to meet his burden with regard to the facial challenge, we overrule his sole issue and affirm the judgment of the trial court.

[Editor's Comment: The appellant apparently did not argue to the Court of Appeals that the Code of Criminal Procedure and Penal Code provisions used in this case simply by their own terms do not apply to juvenile proceedings. Yet, it seems clear those provisions were intended by the legislature to apply only to criminal proceedings because the affirmative finding consequence of enhancement of punishment one offense category does not fit the dispositional scheme in the juvenile system. For example, in this case, the "punishment range" without the affirmative finding is probation or a commitment to the TYC until the child becomes 21; the "punishment range" with the affirmative finding is identical.]

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