Judgement sentencing juvenile to “life without parole” reformed to “life.” [Alas v. State](16-4-2)

On July 28, 2016, the Houston (1 Dist.) Court of Appeals reformed a juvenile life sentence without the possibility of parole to correct a clerical error and reflect that juvenile was subject to review for parole.

¶ 16-4-2. **Alas v. State**, MEMORNADUM, No. 01-15-00569-CR, 2016 WL 4055580 [Tex.App.—Houston (1st Dist.), 7/28/2016].

**Facts:** Victor Alas, a minor, was convicted of capital murder and sentenced to life in prison without the possibility of parole for his role in the death of a teenage girl.

**Held:** Affirmed, judgement reformed to delete the phrase “without parole.”

**Memorandum Opinion:** In his first issue, Alas argues that his sentence of life imprisonment without the possibility of parole violates Texas law. He argues that, because he was a juvenile at the time of the offense, Section 12.31(a)(1) of the Texas Penal Code requires that his life sentence include the possibility of parole. We agree.

Section 12.31 specifies the punishment for an individual convicted of capital murder when the State is not seeking the death penalty. See TEX. PENAL CODE ANN. § 12.31(a). The mandatory punishment is “life without parole, if the individual committed the offense when 18 years of age or older.” Id. § 12.31(a)(2). It is “life, if the individual committed the offense when younger than 18 years of age.” Id. § 12.31(a)(1); Lewis, 428 S.W.3d at 863 (“Life imprisonment, with the possibility of parole, is the mandatory sentence for defendants convicted of capital murder for crimes they committed as juveniles.”).

Alas was 16 years of age at the time of the offense. After the jury found him guilty of capital murder, the trial court immediately pronounced punishment as “confinement in the Texas Department of Criminal Justice Institutional Division for life,” consistent with Section 12.31(a)(1). But, contrary to the requirements of Section 12.31(a)(1), the trial court’s written judgment reflects that Alas was sentenced to life imprisonment without the possibility of parole.

In its brief, the State “concurs that the judgment should be reformed to correct the clerical error and reflect that appellant is subject to review for parole.” See TEX. R. APP. P. 43.2 (permitting court of appeals to modify trial court’s judgment and affirm it as modified); Lewis v. State, 402 S.W.3d 852, 867 (Tex. App.—Amarillo 2013) (reforming judgment on capital murder conviction of juvenile from “life without parole” to “life”), aff’d, 428 S.W.3d 860 (Tex. Crim. App. 2014) (focusing on related issue of whether sentence of minor to life imprisonment without individualized sentencing hearing is cruel and unusual punishment).

**Conclusion:** Because the written judgment imposes a sentence on Alas that goes beyond what is allowed by statute, as the State concedes, we sustain Alas’s first issue.