In Determinate Sentence transfer hearing, recitals of “due notice issued on all parties as required…” in the judgment are presumed true unless there is a conflict between the judgment and record. [In the Matter of R.O.](17-2-1)

On January 27, 2017, the Texarkana Court of Appeals held that in a Determinate Sentence transfer hearing, the lack of victims at the hearing does not demonstrate a lack of notice to them and does not overcome the recitation of notice in the order.

¶ 17-2-1. **In the Matter of R.O.**, MEMORANDUM, No. 06-16-00040-CV, 2017 WL 382420 (Tex.App.—Texarkana, 1/27/2017).

**Facts:** Two witnesses differed in their perspectives during the hearing to decide whether to transfer the sixteen-year-old R.O. to the Texas Department of Criminal Justice (TDCJ) as an adult to complete his twenty-year sentence on two counts of aggravated robbery. Both witnesses were from the Texas Juvenile Justice Department (TJJD). One of them, Leonard Cuccolo, had a number of TJJD records related to R.O. and testified in favor of the transfer; the other, Jamal Richardson, had personal contact with R.O. and testified in favor of retaining him in the TJJD. Appealing from the trial court’s order transferring R.O. to the TDCJ, R.O. claims that victims of his offense were improperly not notified of the hearing and that the trial court abused its discretion in ordering the transfer.

**Held:** Affirmed

**Memorandum Opinion:** R.O. complains that there was error in the failure to give notice of the transfer hearing to the three victims of R.O.’s offenses. He argues that this issue may be raised for the first time on appeal without express preservation in the trial court. The State claims R.O. failed to preserve any such error and that the record does not support a finding of lack of notice. Because this record does not establish a lack of statutory notice, we will overrule this issue without addressing preservation.

When considering the transfer of a juvenile to the TDCJ, there is to be a hearing, notice of which shall be given to certain individuals, including “the victim of the [underlying] offense.” TEX. FAM. CODE ANN. § 54.11(b)(5) (West 2014). Although R.O. did not raise this issue with the trial court, he cites authority suggesting that he may complain on appeal for the first time. See In re J.L.S., 47 S.W.3d 128, 130 (Tex. App.—Waco 2001, no pet.) (citing In re C.O.S., 988 S.W.2d 760, 767 (Tex. 1999)). On the other hand, we recently questioned whether preservation is required of failure to notify a victim of a transfer hearing. See In re D.B., 457 S.W.3d 536, 538 (Tex. App.—Texarkana 2015, no pet.). In D.B., we did not decide whether the issue may be raised for the first time on appeal, but decided the issue of alleged lack of notice on its merits. Id. Here, we can decide this issue on the merits as well, since there is no evidence in the record that notice was not given to R.O.’s victims.

R.O. argues that his three victims were demonstrably absent from the transfer hearing, according to the record, and that there is nothing in the record showing notice to them. While nothing demonstrates the victims’ presence and there is no separate proof of notice, the order of transfer recites that “due notice [of the transfer hearing was] issued on all parties as required by” Section 54.11 of the Texas Family Code.

Recitals contained in the judgment are presumed true unless there is a conflict between the judgment and record. See Parks v. Developers Sur. & Indem. Co., 302 S.W.3d 920, 923 (Tex. App.—Dallas 2010, no pet.); MJR Fin., Inc. v. Marshall, 840 S.W.2d 5, 9 (Tex. App.—Dallas 1992, no writ). When someone challenges a recitation contained in a judgment, he or she must overcome the normal presumption that recitals in the written judgment are correct and are binding unless proven false by the record. See State v. Guerrero, 400 S.W.3d 576, 583 (Tex. Crim. App. 2013) (citing Breazeale v. State, 683 S.W.2d 446, 450 (Tex. Crim. App. 1984) (op. on reh’g)).

**Conclusion:** This record does not establish the lack of notice to R.O.’s victims. Also, contrary to R.O.’s argument, the lack of victims at the hearing does not demonstrate a lack of notice to them and does not overcome the recitation of notice in the order. See D.B., 457 S.W.3d at 539.