

Affirmed and Opinion filed March 16, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-01097-CR

MELVIN CHARLES TELLIS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 794,673**

OPINION

Melvin Charles Tellis (Appellant) was indicted for the felony offense of aggravated robbery. Appellant pleaded guilty and was sentenced by the trial court to eight years' imprisonment. On appeal to this Court, Appellant assigns one point of error, contending that the trial court abused its discretion by not permitting him to withdraw his guilty plea before sentencing. We affirm.

After the trial court thoroughly admonished Appellant, determined that his guilty plea was freely and voluntarily given and accepted Appellant's guilty plea, it deferred imposing a sentence until the completion of a pre-sentence investigation report. During his subsequent sentencing hearing, Appellant communicated his desire to the trial court to withdraw his guilty plea. The trial court judge responded as follows:

That request will be denied. The Court remembers this case and has checked its notes. The Court admonished the defendant. The Court asked if he was pleading guilty because he was guilty. The defendant answered that question [by saying yes]. The Court took that in good faith. And now the Court believes despite what the defendant said, the defendant is playing with the Court.

In his brief, Appellant asserts that the trial court abused its discretion in this case because no witnesses had been called to court for either side and, therefore, there would have been no inconvenience if he was permitted to have a jury trial.

An accused may withdraw his plea any time before judgment is pronounced or the case has been taken under advisement. *See Watson v. State*, 974 S.W.2d 763, 765 (Tex. App.–San Antonio 1998, pet. ref'd); *see also Jackson v. State*, 590 S.W.2d 514, 515 (Tex. Crim. App. 1979). The decision to allow the defendant to withdraw his plea after the judge has taken the case under advisement, however, is within the sound discretion of the trial court. *See id.* Once the judge has admonished the accused, received his plea, and received evidence, passing the case for a pre-sentence investigation constitutes “taking the case under advisement.” *See id.* Because Appellant sought to withdraw his guilty plea after the trial judge passed the case for preparation of a pre-sentence report, we review the court’s decision under an abuse of discretion standard. *See id.* To establish an abuse of discretion, an appellant must show that the trial court’s ruling lies outside the “zone of reasonable disagreement.” *See id.* (quoting *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990)).

It appears from the record presented for our review that to support Appellant’s guilt, the State submitted a form to the trial court entitled, “Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession.” Although presentation of this document alone is a bare-bones approach to proving guilt, a judicial confession is sufficient to sustain a conviction upon a guilty plea even if the defendant does nothing more than affirm that the allegations in the indictment are true and correct. *See Watson*, 974 S.W.2d at 765 (citations omitted). Accordingly, we determine that the stipulations in Appellant’s waiver document established Appellant’s guilt. *See id.* Because the waiver document supported Appellant’s guilt, we conclude that denying Appellant permission to withdraw his plea was not an abuse of discretion. Appellant’s testimony during his sentencing hearing professing his innocence does not change this result. *See id.* Although a trial court is required to allow a defendant to withdraw his guilty plea when the

evidence fairly raises a question about the defendant's guilt in a trial before the jury, pleas before the court are subject to different rules. *See id.* (citing *Fairfield v. State*, 610 S.W.2d 771, 778 n. 11 (Tex. Crim. App. 1981)). We overrule Appellant's sole point of error.

The judgment is affirmed.

PER CURIAM

Judgment rendered and Opinion filed March 16, 2000.

Panel consists of Justices Yates, Fowler, and Edelman.

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