

Affirmed and Opinion filed October 28, 1999.



In The

## Fourteenth Court of Appeals

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NO. 14-99-00586-CR

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**KARIM ABDUL AZIZ, Appellant**

V.

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 177<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause Nos. 651, 577 and 801,893**

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### **O P I N I O N**

Karim Abdul Aziz (Appellant) appeals from the trial court's habeas corpus judgment. Appellant pleaded guilty to the felony offense of indecency with a child. *See* TEX. PENAL CODE ANN. § 21.11(a) (Vernon 1994). The trial court deferred adjudication and placed Appellant on probation for a term of six years. Appellant filed an application for writ of habeas corpus, contending that he should be permitted to withdraw his guilty plea because the trial court failed to admonish him concerning the possibility of deportation. The trial court denied Appellant's supplicated relief. We affirm.

BACKGROUND

Appellant is not a citizen of the United States. In his application for writ of habeas corpus, Appellant contends that approximately five years after he pleaded guilty and was placed on probation for the felony offense of indecency with a child, the United States Department of Justice, Immigration and Naturalization, began deportation proceedings against him. *See* 8 U.S.C.A. § 1227(a)(2)(A), (E) (West 1999). He asserts that the trial court failed to admonish him concerning the possibility of deportation by pleading guilty.

#### STANDARD OF REVIEW

The burden of persuasion in a writ of habeas corpus action is on the applicant to prove his allegations by a preponderance of the evidence. *Ex parte Lafon*, 977 S.W.2d 865, 867 (Tex.App.–Dallas 1998, no pet.). In reviewing the trial court’s habeas corpus judgment, we view the evidence in the light most favorable to the ruling and accord great deference to the trial court’s findings and conclusions. *Id.* Absent a clear abuse of discretion, we accept the trial court’s decision whether to grant the relief requested in a habeas corpus application. *Id.*

#### DISCUSSION

Appellant contends that if he would have known that deportation was a potential consequence of pleading guilty, then he would not have pleaded guilty. He maintains that his guilty plea was not knowingly and voluntarily made because the trial court failed to admonish him concerning the possibility of deportation.

Article 26.13 of the Texas Code of Criminal Procedure provides, in pertinent, the following:

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

....

(4) the fact that if the defendant is not a citizen of the United State of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law.

....

TEX. CODE CRIM. PROC. ANN. art. 26.13(a)(4) (Vernon 1989).

A habeas corpus applicant seeking relief from the failure to receive the admonishment required by article 26.13(a)(4) must establish that there was no admonishment given consistent with article 26.13(a)(4) or otherwise suggesting the possibility of deportation, *and* that the lack of such admonishment affected his decision to enter a plea of guilty. *Ex parte Tovar*, 901 S.W.2d 484, 486 (Tex.Crim.App. 1995) (emphasis added); *see also Carranza v. State*, 980 S.W.2d 653, 656-58 (Tex.Crim.App. 1998)<sup>1</sup>; *Shannon v. State*, 708 S.W.2d 850, 851 (Tex.Crim.App. 1986) (citing *Brady v. United States*, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970)).

Here, a reporter's record of Appellant's habeas corpus hearing is not available for our review.<sup>2</sup> Further, Appellant did not provide this Court with a complete record of his plea proceedings. There is a presumption of the regularity of the judgment of conviction and the proceedings absent a showing to the contrary. *Ex parte Wilson*, 716 S.W.2d 953, 956 (Tex.Crim.App. 1986). The burden is on the defendant to overcome this presumption. *Id.*

Appellant presented this Court with only his application for writ of habeas corpus, his affidavit in support of his application, and a copy of the trial court's judgment for his offense of indecency with a child. In his affidavit, Appellant states that he "was not admonished by Judge Steib of the 177<sup>th</sup> Judicial District Court that pleading guilty could result in deportation." However, the testimony of an appellant is insufficient to overcome the presumption of regularity of the records. *Reeves v. State*, 500 S.W.2d 648, 649 (Tex.Crim.App. 1973). Further, we note that in the trial court's written judgment, it states, in part, that "[t]hereupon the Defendant *was admonished by the Court of the consequences of the said plea* . . . [and that] the said plea was accepted by the Court and is here entered of record upon the minutes." (emphasis added). It has been held that "when the recitals in a judgment reflect that an appellant has been admonished as to the *consequences of his guilty plea*, we are entitled to presume that the

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<sup>1</sup> We note that the failure of a trial court to admonish a defendant regarding deportation status is non-constitutional error. *See Carranza*, 980 S.W.2d at 656; *see also State v. Jimenez*, 987 S.W.2d 886, 889 (Tex.Crim.App. 1999).

<sup>2</sup> The clerk of this Court made a request to the court reporter of the 177<sup>th</sup> District Court to prepare a reporter's record. However, the clerk was informed by the court reporter that Appellant's habeas corpus hearing was not recorded.

admonishment was properly given absent competent proof in the record to the contrary.” *Brown v. State*, 917 S.W.2d 387, 390 (Tex.App.–Fort Worth 1996, pet. ref’d). In this case, we have been presented with no competent proof to show that Appellant was not properly admonished. Thus, Appellant has failed to overcome the presumption that he was properly admonished. *See id.*

Accordingly, we find that Appellant was properly admonished concerning the possibility of deportation by pleading guilty, notwithstanding his assertion to the contrary.

The trial court’s habeas corpus judgment is affirmed.

PER CURIAM

Judgment rendered and Opinion filed October 28, 1999.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

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