Dismissed and Opinion filed December 23, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00448-CR

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DERRICK PAGE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 724,079

O P I N I O N

Appellant was charged by indictment with the offense of delivery of a controlled substance. Upon the State's recommendation, the trial judge accepted appellant's plea of guilty, found the evidence sufficient to substantiate guilt, but withheld an adjudication of guilt and placed appellant on community supervision for a period of three years, assigned 300 hours of community service, and a fine in the amount of $1,000. The State subsequently filed a motion to adjudicate guilt. Appellant entered into a stipulation of evidence, which stated the allegations in the motion to adjudicate guilt were true. Pursuant to a plea bargain agreement,

punishment was assessed at confinement for one year in a state jail. Appellant filed a pro se notice of appeal and counsel was appointed.

Appellant raises three points of error. The first point contends the trial court erred in not holding a hearing on appellant's motion for new trial, which was filed following the adjudication of guilt. The second and third points contend the trial court erred in convicting appellant because he was denied the opportunity to present evidence in his behalf and that he did not waive his right to compulsory process. The State responds that these points are not subject to appellate review.[1] We agree.

Our law is well settled that a party may appeal only that which the Legislature has authorized. *See Phynes v. State*, 828 S.W.2d 1, 2 (Tex. Crim. App. 1992); *Galitz v. State*, 617 S.W.2d 949, 951 (Tex. Crim. App. 1981). In the context of deferred adjudication probation, the Legislature has specifically prohibited an appeal from a determination to proceed with an adjudication of guilt on the original charge. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (Vernon Supp.1999) (No appeal may be taken from the determination by the trial court of whether it proceeds with an adjudication of guilt on the original charge). *Connolly v. State*, 983 S.W.2d 738, 740 (Tex. Crim. App. 1999); and, *Sanders v. State*, 944 S.W.2d 448, 450 (Tex. App.—Houston [14th Dist.] 1997, no pet.) (noting prohibition against direct appeal of determination to adjudicate is total). The Court of Criminal Appeals has noted "from the beginning of deferred adjudication practice that the Legislature meant what it said in Article 42.12, § 5(b)." *Olowosuko v. State*, 826 S.W.2d 940, 942 (Tex. Crim. App. 1992).

This prohibition applies regardless of the alleged error. In *Phynes*, 828 S.W.2d at 2, the court refused to consider the defendant's arguments concerning a violation of his right to counsel. As stated by the court: "It naturally follows that when a legislative enactment says an accused may not appeal a determination to adjudicate, there is no right to do so. Therefore,

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[1] The State also argues appellant's general notice of appeal did not confer jurisdiction in this court. *See Watson v. State*, 924 S.W.2d 711 (Tex. Crim. App. 1996). However, out of an abundance of caution we will reject this argument because appellant's subsequent notice of appeal states he was given permission to appeal and the trial court appointed counsel to represent appellant for the purposes of appeal.

even if appellant's right to counsel was violated, he may not use direct appeal as the vehicle which to seek redress." *Id*. Similarly, the Fort Worth Court of Appeals declined to review the trial court's decision to adjudicate guilt when the defendant contended the plea of true was involuntary. *See Gareau v. State*, 923 S.W.2d 252, 253 (Tex. App.—Fort Worth 1996, no pet.).

Because of this legislative prohibition on the right to entertain an appeal from the trial court's decision to adjudicate guilt, dismissal is the appropriate disposition.[2]

For these reasons, this appeal is dismissed for want of jurisdiction.

/s/ Charles F. Baird
Justice

Judgment rendered and Opinion filed December 23, 1999.

Panel consists of Justices Anderson, Hudson, and Baird.[3]

Do Not Publish — TEX. R. APP. P. 47.3(b).

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[2] We pause to note that if authorized to reach the merits of the points of error, we would hold they were without merit for the following reasons. Regarding the first point of error, we note the motion for new trial was not timely filed under TEX. R. APP. P. 21.4. Consequently, the trial court was not obliged to conduct a hearing on the motion. Regarding the second and third points of error, these contentions have been previously raised and rejected. *See Vanderburg v. State*, 681 S.W.2d 713, 718 (Tex.App.--Houston [14th Dist.] 1984, pet. ref'd) (TEX. CODE CRIM. PROC. ANN. art. 1.15 does not prohibit a defendant from offering rebuttal evidence and there is no requirement that a defendant must expressly waive his right to compulsory process.)

[3] Former Judge Charles F. Baird sitting by assignment.