

Court of Criminal Appeals
September 25, 2013

Thomas v. State

No. PD-1454-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Judge Price delivered the unanimous opinion of the Court.

Thomas was convicted of second-degree felony possession of marijuana between fifty and two thousand pounds. A Texas DPS officer stopped Thomas, who was driving on I-40, for crossing the white fog line multiple times. The officer noticed that Thomas seemed nervous and that her hands were shaking. She was driving a one-way rental with very little luggage, which also made the officer suspicious. The officer gave Thomas a warning and asked to search the trunk, but Thomas refused. The officer detained Thomas for five minutes while a drug canine unit sniffed the car. The dog alerted to the presence of drugs in the trunk and the officers found 227 pounds of marijuana.

At trial, Thomas argued that she was improperly detained while waiting for the canine unit. The trial court denied the motion to suppress and Thomas pled guilty and signed a judicial confession without a sentencing recommendation. During the punishment phase, Thomas's counsel stated that he had no objection to evidence concerning the marijuana—lab reports and photographs. The trial court sentenced Thomas to six and a half years of confinement and a \$2,500 fine. Thomas's trial counsel gave oral notice of appeal on the suppression issue. The court of appeals refused to consider the motion to suppress because trial counsel affirmatively stated that he did not object to the evidence during the punishment phase.

Issue: Whether, having once preserved her appellate claim of error, Thomas took some affirmative action later that served to forfeit it.

The Court held that “the rule that a later statement of ‘no objection’ will forfeit earlier-preserved error is context-dependent.” Courts of appeals should focus on the record as a whole, not simply the “no objection” statement in isolation. “If the record as a whole plainly demonstrates that the defendant did not intend, nor did the trial court construe, his ‘no objection’ statement to constitute abandonment of a claim of error that he had earlier preserved for appeal, then the appellate court should not regard the claim as ‘waived,’ but should resolve it on the merits.” However, if the record is unclear as to whether the abandonment was intended or understood, the court of appeals should consider the earlier-preserved error waived. Thomas did not intend, and the trial court did not understand, the preservation of error to be waived. Reversed and remanded.

Wiley v. State

No. PD-1728-12

Case Summary written by Jessica Rugeley, Online Edition Editor.

Judge Price delivered the opinion for a unanimous Court.

The trial court found Wiley indigent and appointed trial counsel for him. Wiley pled guilty to hindering apprehension and the trial court sentenced him to eight years of confinement, which the trial court suspended and imposed eight years of community supervision. The trial court ordered Wiley to pay court costs, including attorney fees, without finding that Wiley had the resources to pay those costs. Wiley signed the judgment and waived his right to appeal. Wiley's supervision was later revoked and he then appealed that the evidence was insufficient for the court order to pay attorney fees. The court of appeals held that Wiley procedurally defaulted his claim by failing to object to the fees at the time the court imposed them. The court of appeals recognized, however, that other courts have split on this issue.

Issue: Whether Wiley forfeited his sufficiency claim. The Court recognized a split as to how an appellant can forfeit: (1) by failing to raise an objection at time the fees are imposed and (2) by failing to appeal immediately following placement on community supervision with fee requirements.

The Court held that Wiley forfeited his claim by failing to immediately appeal after the trial court imposed fees. An appellant "may not accept a condition of probation as part of a plea agreement and later challenge that condition for the first time on appeal." *Speth*, 6 S.W.3d 530 (Tex. Crim. App. 1999). An appellant also may not raise on appeal from community supervision revocation claims that could have been brought on appeal from the original imposition of community supervision. *Manuel v. State*, 994 S.W.2d 658 (Tex. Crim. App. 1999).

Wiley argued that these principles do not apply because he was appealing the revocation order, which "improperly reiterated" the free requirement.

The fee requirement was separate from his community supervision requirements. The judgment "independently required him to pay court costs, quite apart from the conditions" otherwise required for community supervision (drug testing, reporting to a probation officer, etc.). Thus, *Speth* does not apply and Wiley was not required to object at the time the trial court imposed the fees because the requirement to pay court costs was not solely a function of the probation contract. "Because the obligation to pay attorney fees was already imposed by the judgment as a court cost, a reviewing court

may treat it for purposes of appeal as it would treat any other judgment obligation for purposes of an evidentiary sufficiency claim.

Manuel applies and because Wiley knew that the trial court ordered him to pay the fees, as shown by his signature on the judgment, but he chose to waive his right to appeal, he forfeited his sufficiency claim.