

Court of Criminal Appeals
September 23, 2015

Rodriguez v. State

No. 04-12-00341-CR

Case Summary written by Morgan Shell, Staff Member.

JUDGE MEYERS delivered the opinion of the court, in which JUDGE ALCALA, RICHARDSON, and NEWELL joined.

FACTS: The appellant was charged with “ten counts of sexual assault of a child and indecency with a child.” The State offered the appellant a ten-year plea bargain. Based on his attorney’s advice, he declined the offer and proceeded to trial. The jury convicted the appellant and he was sentenced to a punishment of eight life sentences and a 20-year sentence. The appellant subsequently filed a motion for new trial based on a claim of ineffective counsel. The trial judge granted the motion and required the State to reinstate the initial ten-year plea bargain, which the appellant ultimately accepted. The trial judge subsequently rejected the ten-year plea bargain and gave Appellant the option to withdraw his guilty plea or accept a 25-year sentence. The appellant moved to recuse the trial judge based on prejudice and the judge voluntarily recused herself. The appellant was granted a new judge but filed another motion requesting that the State re-offer the 10-year plea deal. The new trial judge, however, stated that the slate was wiped clean and agreed that it would accept a new agreement on the condition that one was reached. The State offered the appellant a 25-year sentence and the appellant accepted. The new trial judge accepted the deal.

The appellant appealed the judgment and claimed that he was entitled to specific performance of the original plea offer of ten-years. The court of appeals used the *Strickland* standard to determine that the appellant had been prejudiced: “Whether Appellant would have accepted the original plea deal had he been given competent advice by counsel, whether the State was likely to withdraw the plea bargain, and whether the trial court was likely to accept the plea bargain.” The court of appeals required the State to reoffer the ten-year plea bargain.

The Court of Criminal Appeals granted the State a petition for discretionary review. It argued that the court of appeals erred in assuming that the trial judge recused herself based on prejudice, because nothing in the record evidenced the judge's bias. The State, basing its analysis on the *Strickland* standard, argued that there was no evidence demonstrating that the original judge would have accepted the State's ten-year recommended sentence. Finally, the State argued that the trial judge should not have reversed the judgment but instead should have affirmed the appellant's conviction and remanded the case for determination by the trial judge.

ISSUE 1: Whether there is a "reasonable probability that the original trial judge would have accepted the ten-year plea agreement when it was initially offered, prior to trial."

ANALYSIS: The court agreed with the court of appeals that based on the *Strickland* standards relied on in *Frye* and *LaFler*, the appellant was prejudiced by his attorney's ineffective counsel. The court reasoned that had Appellant received competent counsel, he would have likely accepted the original ten-year plea deal. Likewise, the court determined that the State would probably not have withdrawn the plea bargain. Finally, the court pointed out that even with the appellant's extensive criminal history record, there was no indication in the record to suggest that the trial court would have rejected the recommended ten-year plea bargain.

ISSUE 2: Whether the court of appeals erred when it considered the trial judge's voluntary recusal.

ISSUE 3: Whether the court of appeals erred when it required the State to reoffer the original ten-year plea bargain.

ANALYSIS: The court found that the court of appeals erred in assuming that the trial judge recused herself based on prejudice. The court observed that there was nothing in the record that indicated prejudice by the trial judge. Based on the Texas Code of Criminal Procedures Article 26.13(a), the court held that the trial judge was within her discretion to reject the State's ten-year plea bargain and offer an alternative sentence of 25-years. The court held that since the appellant was not prejudiced by the trial judge, the court of appeals erred in determining that the appellant was entitled to have the original plea bargain presented to a new trial judge. Nevertheless, the court noted that the appellant still received a new trial judge and a

clean slate—the appellant was able to start over as if the negotiations had never occurred. The court observed that at this point, the trial judge could either accept the plea agreement or go to trial. But instead, the court of appeals held that the trial judge was required to tell the State to reoffer the ten-year plea bargain. It therefore erred in its ruling.

HOLDING: After the recusal of the trial judge, the slate was wiped clean. Because the new trial judge accepted the 25–year sentence that the State and the appellant agreed upon, the court ordered the lower court to reinstate the 25–year plea agreement.

Liverman v. State

No. PD-1595-14, PD-1596-14

Case Summary written by Kylie Rahl, Staff Member.

JUDGE KELLER delivered the opinion of the court in which JUDGES KEASLER, HERVEY, ALCALA, RICHARSON, YEARLY, and NEWELL joined. JUDGE JOHNSON concurred and JUDGE MEYERES dissented.

After the appellants Roger and Aaron Liverman filed fraudulent mechanic’s lien affidavits alleging they had performed “labor and/or materials” worth a certain amount of money, the State charged and convicted the appellants with securing the execution of documents by deception. Specifically, the indictments alleged that the appellants caused the county clerk to sign or execute the mechanic’s lien affidavits.

Issue: Does a person commit a crime of securing the execution of documents by deception when he files a false mechanic’s lien affidavit with the county clerk?

The court’s analysis turned on the meaning of the statute under which the appellants had been prosecuted. The statute—TEX. PENAL CODE § 32.46(a)(1)—reads:

(a) A person commits an offense if, with intent to defraud or harm any person, he, by deception:

(1) causes another person to sign or execute any document affecting property or service or the pecuniary interest of any person.

The court concluded the meaning of “execute” found within the statute was “to bring (a legal document) into its final, legally enforceable form[.]” In determining whether the document at issue here

was “executed,” the court found the mechanic’s lien affidavit became legally enforceable upon filing; thus it was executed. Because the statute also requires the appellants to cause “another person” to execute the document, the court then analyzed whether a county clerk was considered to be that person.

According to the Property Code, the person claiming the lien is the person filing the affidavit with the county clerk, and “failure of the county clerk to properly record or index a filed affidavit does not invalidate the lien.” This language establishes that the county clerk is merely a recipient of the filing, and recording or indexing by the clerk does not in any way alter the legal effect of a filing. Further, the court noted the clerk need not have any active involvement in the filing because in situations of electronic filing, a machine may handle the entire transaction of receiving and acknowledging the filing. Consequently, the court concluded the county clerk did not execute the mechanic’s lien affidavit when filed; rather the appellants executed the documents themselves. As a result, the appellants did not cause “another” to “execute” the mechanic’s lien affidavits according to Penal Code § 32.46(a)(1); therefore, the evidence was legally insufficient to support the conviction.