

Court of Criminal Appeals Sentencing Topics

Hopkins v. Texas

No. PD-0794-15

Case summary written by Laura Parton, Articles Editor.

JUDGE HERVEY delivered the opinion of the court, in which JUDGE JOHNSON, JUDGE KEASLER, JUDGE ALCALA, JUDGE RICHARDSON, and JUDGE NEWELL joined, and JUDGE KELLER and JUDGE YEARY concurred.

Appellant attempted to shoot the complainant while endeavoring to abscond with her purse. Appellant was subsequently tried and convicted for aggravated robbery with a deadly weapon. During the punishment stage of trial, the State sought to enhance the sentence by use of the habitual-offender statute under Texas Penal Code §12.42(d). The statute allows for the sentencing of life imprisonment for a felony offense (other than a state jail felony) when the defendant has been convicted of two prior felony offenses, if the second offense occurred after the first had become final.

After Appellant pled true to two prior convictions for aggravated assault, he was sentenced to life imprisonment. Appellant appealed, claiming that the State failed to meet its burden by not presenting sufficient evidence of the sequential nature of the two prior convictions, and failing to provide the year of the second conviction in the notice pleading. The Fifth Court of Appeals affirmed the trial court's decision, and Appellant appealed to the Texas Court of Criminal Appeals.

The court reiterated the following holding from its 2013 decision in *Roberson v. State*: "[i]f, however, a defendant pleads true to an enhancement paragraph, that relieves the State of its evidentiary burden to prove the enhancement allegations, unless the record 'affirmatively reflects' that the enhancements were improper." The court held that, since Appellant pled true to the allegations, any apparent ambiguity in the notice pleading was not enough to affirmatively establish that the enhancements were improper.

On the contrary, the court pointed to the record, specifically the cross-examination of Appellant's mother during the punishment phase, which clearly established the sequential nature of the two prior aggravated assault convictions. The court affirmed the judgment of the Fifth Court of Appeals because Appellant failed to present any evidence from the record to establish that the enhancements were improperly applied.

State v. Simpson

No. 05-14-00618-CR

Case Summary written by Morgan Shell, Articles Editor.

JUDGE NEWELL delivered the opinion of the court, in which JUDGE KELLER, JUDGE JOHNSON, JUDGE KEASLER, JUDGE HERVEY, JUDGE ALCALA, JUDGE RICHARDSON, and JUDGE YEARY joined. JUDGE MEYERS dissented.

Appellant Mark Twain Simpson entered a plea of guilty to second-degree felony robbery and plead true to an enhancement provision alleging a prior conviction for aggravated robbery. The trial court sentenced Simpson to twenty-five years and Appellant subsequently filed a motion for new trial on the grounds that the trial court's sentence was grossly disproportionate under the Eighth Amendment of the United States Constitution. The Court of Appeals, in response to the State's appeal of the trial court's granting of a new punishment trial, vacated the trial court's order on the grounds that although Simpson articulated a *valid legal claim*, he *failed to substantiate* it.

The Court of Criminal Appeals granted review to determine whether the court of appeals applied the correct standard of review under *Thomas* and *Herndon*.

The claim that a sentence is disproportionate is a valid legal claim and is embodied within the Constitution, which requires a sentence be graduated and proportionate to the offense. There is no strict proportionality requirement, however, between the offense and the sentence. The court explained that a punishment assessed within the given statutory limits, including an enhanced sentence pursuant to a habitual-offender statute, is *not* excessive, and therefore not a disproportionate sentence.

While the court recognizes that there are no clear standards guiding the determination of a disproportionate sentence, it requires a judge to determine the severity of a sentence “in light of the harm caused or threatened to the victim, the culpability of the offender, and the offender’s prior adjudicated and unadjudicated offenses.” If this threshold determination leads to an inference of gross disproportionality, the court should then compare the sentence in question with the sentences of other offenders with the same sentence and in the same jurisdiction.

In light of Simpson’s role in the offense and his “significant” prior adjudicated and unadjudicated offenses, the court held that the court of appeals did not err in its finding that Simpson’s sentence was *not* grossly disproportionate. Since Appellant’s sentence fell within the appropriate statutory range of five – ninety-nine years or life, this court held that there could be no initial inference that the sentence was disproportionate to the crime, and therefore no subsequent requirement to compare Simpson’s penalty with other similar offenses within the jurisdiction. Further, where there is no inference that a penalty is disproportionate, there can be no claim that the Eight Amendment claim was *substantiated*.

In this instance, Simpson used an Eight Amendment claim as a vehicle to develop evidence not introduced at the initial punishment hearing. Citing *Thomas*, the court explains, however, that the absence of a valid legal claim or failure to substantiate the claim is fatal to a trial court’s granting of a new trial on punishment. This court held that while Simpson made a valid legal claim, he failed to produce evidence substantiating the claim. The record shows that at the hearing on the motion for new trial, Appellant attempted to show his minimal role in the offense as well as his age and the circumstances of his prior offenses. While relevant, such showings failed in the eyes of this court to substantiate an Eight Amendment claim and should instead have been presented during the initial punishment hearing.

Accordingly, the judgment of the court of appeals was affirmed.

Wood v. State

No. PD-0061-15

Case Summary written by Jessica Robertson, Staff Member.

PRINCIPAL JUDGE MEYERS delivered the opinion of the Court in which JUDGE JOHNSON, JUDGE KEASLER, JUDGE HERVEY, JUDGE ALCALA, JUDGE RICHARDSON, AND JUDGE NEWELL joined.

The State of Texas found the Appellant, Carlton Wood, guilty of evading arrest. The trial court accepted the enhancement alleged in the indictment as “true” and sentenced the Appellant to four years imprisonment. On appeal, the Appellant argues “that there was no basis for the trial court’s finding that the enhancement paragraph was ‘true.’” The court of appeals reversed the punishment portion of the judgment, holding that the State failed to prove the conviction used for enhancement, and remanded the case for a new punishment hearing. The State raises three grounds on the petition for discretionary review:

- 1) The court of appeals erred by refusing to apply a presumption that the defendant pled “true” to the enhancement.
- 2) Where the trial court finds an enhancement “true” and the defendant does not object, the presumption should be applied.
- 3) The evidence supported the court’s finding of “true,” contrary to the court of appeals’ holding.

The Court of Criminal Appeals reversed the court of appeals. Although the court did not apply a presumption that Appellant pled “true” (as suggested in the State’s first two grounds for review), the court concluded that the evidence in this case was sufficient to prove the enhancement allegation because the court of appeals failed to view the evidence in the light most favorable to the trial court’s finding of “true.”

The court found that when the record shows that there is a plea of not guilty to the indictment, and that the defendant disputed the guilt and punishment, the court would not presume that he pled “true” to the enhancement paragraph of the indictment. Furthermore, the court explained that the burden was on the State to prove each element in the indictment and the presumption could not be applied if the defendant failed to object to a finding of “true.”

As to the State’s final ground for review, the Court of Criminal Appeals agreed. The court held that, when considering all evidence in the light most favorable to the trial court’s finding, the record indicated sufficient evidence to link the Appellant to the enhancement offense. Additionally, a rationale finder of fact could have found the existence of

the alleged conviction used for enhancement and the Appellant's link to the conviction, beyond a reasonable doubt.

The court held that the trial court did not err in concluding that the prior conviction alleged in the enhancement paragraph existed and was linked to Appellant. Accordingly, the judgment of the court of appeals was reversed.

JUDGE KELLER filed a dissenting opinion.

The State did not have the burden of proof on enhancement allegations. The issues raised concerning presumptions depend more on procedural requirements than the sufficiency of evidence. Moreover, the court of appeals was correct in holding that the evidence for the enhancement allegation was insufficient. The proper approach is to remand the case for a new punishment hearing so the State may attempt to prove the enhancement allegation.

Sanchez v. State

No. PD-0372-15

Case Summary written by Bailey McGowan, Staff Member.

JUDGE Meyers delivered the opinion of the Court in which JUDGE KELLER, JUDGE JOHNSON, JUDGE KEASLER, JUDGE ALCALA, JUDGE RICHARDSON, JUDGE YEARY, and JUDGE NEWELL joined. JUDGE HERVEY concurred.

Luis Sanchez, the appellant, was found guilty of a third-degree felony for "assaulting an individual with whom he 'has or has had' a dating relationship."

On December 18, 2009, the appellant beat his then-girlfriend, Rachel Price in their shared home. First, he hit her on the side of the head on their bed while the couple's two-year-old child lay in the crib next to them. Then, the appellant kicked and held a knife to her throat while she bathed their child. Finally, the Appellant dragged her by the hair, wrapped a telephone cord around her neck, restricting her breathing while forcing her to make a phone call, leaving marks on her throat.

The appellant and Price were together from June 2006 to December 2009. Price filed for a divorce in June of 2010 at the advice of her legal aid attorney who recommended filing due to the possibility

that the pair could be common law married. The two had cohabitated, filed joint tax returns, and Price's father testified at the appellant's trial the couple was common-law married.

The appellant was sentenced in a bench trial to six years imprisonment and a \$7,500 fine. He appealed claiming that at the time of the assault he was not in a dating relationship with Price and instead the pair were common-law married. The court of appeals upheld the conviction and allowed for the enhanced assault offense from a Class A misdemeanor to a third-degree felony because the pair had dated prior to their common-law marriage. The court of appeals also found that the couple was not dating at the time of the assault due to the common law marriage's existence, due to the subsequent divorce. The court of appeals reasoned the "has had" language of the statute eliminates a requirement that the dating relationship be ongoing, as alleged by the appellant.

The Court of Criminal Appeals ultimately affirmed the court of appeals. The appellant's argument centered on the idea that a spousal relationship overrode the past dating relationship, making the enhanced charge incorrect. The state argued that the plain language of the statute allows for a past dating relationship to enhance an assault charge, even if the relationship had not ended recently.

The past case law supported the state's arguments because past appellate courts found couples did not have to currently be in a dating relationship for the enhancement to apply. The court went on to explain that there are three classes in the Texas Family Code that allow for an enhancement of an assault to a third-degree felony: dating, family, and household. The court agreed that the plain language allows for a dating relationship to have ended prior to the assault to qualify under the dating relationship definition for enhancement. The court held that the appellant could have been convicted of assaulting his spouse based solely on their past dating relationship and said the statute does not "indicate that a marriage somehow cancels out a prior dating relationship between the same individuals."

Finally, the court found that the statute did not require a past dating relationship to have ended recently in order to qualify for the enhancement and that if that was the legislature's intent, that type of language should have been inserted.

Overall, the Court of Criminal Appeals affirmed the decision of the court of appeals.

Byrd v. State of Texas

No. PD-0213-15

Case Summary written by Alexandra Brak, Staff Member.

JUSTICE RICHARDSON delivered the opinion of the Court.

While Mr. Thomas Byrd was on parole for a fifteen-year sentence from a drug conviction in 2008, he was arrested in May 2012 for possession of cocaine, methamphetamine, and evading arrest in McLennan County. Byrd was convicted of all three offenses, and received a sentence of eighty, twenty, and twenty years respectively. The sentence of each count indicated that the “Date Sentence [is] to Commence” was on October 1st, 2013, the date of Mr. Byrd’s conviction. The three judgments in 2012 also indicated that the sentences would “run consecutively” to and “shall begin only when” the sentence and judgment of Byrd’s 2008 conviction has “ceased to operate.” Mr. Byrd’s parole for the 2008 offense was not revoked at the time of the sentencing of his 2012 offenses.

The issue before the Court of Criminal Appeals was whether a trial court could permissibly order Mr. Byrd’s sentences for the 2012 offenses to run consecutively to a future parole revocation for his 2008 offense. In other words, when a defendant commits a second offense while on parole for a first offense, is the trial court able to stack the second sentence on top of the first sentence? Or, since parole on the first sentence has been granted, has the first sentence ceased to operate?

On appeal, defendant-appellant Mr. Byrd argued that the trial court’s cumulation order “impermissibly” ordered his sentences to run consecutive to some future sentence.” The Tenth Court of Appeals held against Mr. Byrd’s argument, taking the position that “parole revocation was not necessary” in determining that the first sentence was still in operation. In doing so, the Tenth Court of Appeals affirmed the trial court’s conviction and consecutive sentences. On Mr. Byrd’s petition for discretionary review, the Court of Criminal Appeals relied heavily on case law. In one of its prior decisions, *Ex Parte Wrigley*, 178 S.W.3d 828 (Tex. Crim. App. 2005), the defendant’s parole on a first offense was revoked before the trial court sentenced the defendant for a

second offense. In *Wrigley*, the court held that a trial court could “stack the second sentence on top of the first sentence because the ‘original sentence [was] still in operation.’” This meant that the defendant’s second sentence would begin running only when the first revoked sentence concluded, and the first sentence had not yet concluded because parole was revoked. In the present case, Mr. Byrd’s parole was not revoked at the time of sentencing on his second offense. The court held, remaining consistent with its holding in *Wrigley*, that the timing of parole revocation regarding the original offense did effect a trial court’s ability to stack the second offense on top of the first offense.

The court also conducted a statutory analysis of the relevant portions of the Code of Criminal Procedure that govern how and when trial courts may order consecutive sentences. Article 42.08(a) of the Code of Criminal Procedure, in relevant part, states that “the judgment in the second and subsequent convictions may either be that the sentence imposed or suspended shall begin when the judgment and the sentence . . . in the preceding conviction has *ceased to operate*, or that the sentence imposed or suspended shall run concurrently with the other case” The court reviewed the trial court’s decision interpreting Article 42.08(a) for abuse of discretion. The court clarified the language “ceased to operate” by looking to Section 508.150(b) of the Texas Government Code, which states that the phrase means either the sentence has been served in full, or that the inmate has been determined to be eligible for release on parole. The court relied on *Ex parte Kuester*, 21 S.W.3d 264 (Tex. Crim. App. 2000), which held that Article 42.08 and Section 508.150(b) should be read together. Relying on *Kuester*, the court held that a sentence “ceases to operate” when a defendant “makes parole.” The court remained consistent with its holding in *Wrigley*, by upholding the exception that the defendant does not “make parole” if their parole is revoked.

Since there was no evidence on the record that Mr. Byrd’s parole had been revoked on his 2008 drug offense sentence, the court concluded that Mr. Byrd “made parole” on his first offense, and therefore that sentence had “ceased to operate” when he was sentenced on his second offense. Therefore, the trial court’s cumulation order was held to be invalid, since there was no first sentence to stack the second offense on. The court distinguished its holding from lower courts’ decisions on the issue, since those cases were not based on “recently

enacted statutory authority or precedent set by this Court.” The court also justified its holding by pointing out that it would be absurd to stack a “prison sentence on top of a paroled sentence that has not yet been revoked” That result would create a situation like that of stacking a confinement sentence on top of a suspended sentence, which is forbidden under the Code of Criminal Procedure. It would not make sense, the court explained, to allow a defendant to live out of prison for decades on parole, only to have to return to prison after potentially becoming a rehabilitated member of society.

Williams v. State

PD-1124-15

Case Summary written by Caroline McLeod, Staff Member.

PRESIDING JUDGE KELLER delivered the opinion of the court. JUDGE JOHNSON concurred.

On July 25, 1998, appellant James Earl Williams forcibly entered the home of Roy Mitchell and robbed him at gunpoint. He also shot Darrell Davis in a parking lot on the same day, and a stray bullet struck a nine-year-old child. Williams was indicted for aggravated robbery for the incident with Mitchell and for aggravated assault for the incident involving Davis.

Williams pled guilty pursuant to a plea agreement in exchange for a fifteen-year sentence. At the plea hearing, Williams’s counsel orally stated that the State would refuse prosecution of any “any other [unfiled] case” of which the “State” had notice. The prosecutor confirmed defense counsel’s statement.

In 2012, Williams was indicted for a murder that was unrelated to his prior charges, which allegedly occurred on June 12, 1998. At trial, Williams moved to dismiss the murder prosecution on the basis of his plea agreement in the prior cases. He asserted that the murder case was an unfiled case in which the State had notice, in accordance with his counsel’s statement in the oral portion of the prior plea agreement.

The State submitted affidavits from the prosecutor and the defense attorney in the prior cases, in which both attorneys stated that the murder case was not part of the plea agreement. The State contended that the intent of the parties and the written documents controlled over what was said at the plea hearing.

The trial court denied appellant's motion to dismiss, and Williams was convicted of murder and sentenced to eighty-five years in prison. The court of appeals affirmed Williams's conviction.

Issue: Whether the prior plea agreement barred prosecution of the murder case.

The Court of Criminal Appeals of Texas first looked at the plain language of the plea agreement to determine whether any ambiguity existed. The court found that there was ambiguity; the oral parts of the plea agreement could not be interpreted literally. Specifically, the defense counsel's statement "any other case" could be interpreted to mean "any other case involving the defendant" or it could reference any other case arising from the same facts as the cases pled. The court construed the ambiguous terms narrowly against the appellant because the defense counsel in the prior cases was responsible for the language used. Furthermore, both the defense counsel and the prosecutor stated that the murder case was not included in the plea agreement. Thus, the court held that the oral term of the plea agreement was limited to unfiled cases that arose from the same facts as the cases to which Williams pled. As a result, the prosecution of the unrelated murder case was not barred by the plea agreement.

Ex Parte Jeffery Lee Wood

No. WR-45,500-02

Case Summary written by Davinder Jassal, Staff Member.

PER CURIAM. PRESIDING JUDGE KELLER and JUDGE MEYERS dissent.

Jeffery Lee Wood, the applicant, sought a post-conviction writ of habeas corpus under Article 11.071 § 5 of the Texas Code of Criminal Procedure. In March of 1998, under a theory of party liability, a jury convicted the applicant of capital murder. The trial court set his punishment at death, and on appeal, the court affirmed his conviction and sentence. Two years later, on March 27, 2000, the applicant filed his first application for writ of habeas corpus, which the court denied. Recently, the applicant filed his second application on August 2, 2016.

In his second application, the applicant raised eight claims, which include that his sentence was based on false scientific evidence and false testimony in violation of due process. The court found that his

third and fourth claims satisfied the requirements of Article 11.071 § 5. Accordingly, it remanded those two claims to the trial court, and granted the applicant's motion to stay his execution pending resolution of his application.

JUDGE ALCALA filed a concurring opinion.

Judge Alcala agreed with the court's judgment, which granted Jeffery Lee Wood's motion to stay and remanded his third and fourth claims. However, Judge Alcala would have also remanded the applicant's fifth, sixth, and seventh claims. Under these claims, the applicant alleged that the evolving standards of decency prohibited the death penalty after a conviction under a theory of party liability, that his moral culpability and participation in the offense were too minimal for the death penalty, and the death penalty was unconstitutional under the Eighth Amendment because it was arbitrary and did not target the worst offenders.

First, Judge Alcala examined two cases, *Enmund v. Florida*, 458 U.S. 782 (1982) and *Tison v. Arizona*, 481 U.S. 137 (1987), which, respectfully, established a culpability and substantial-participation requirement to justify the death penalty; in both cases, the court relied upon prevailing societal views regarding capital punishment. Judge Alcala noted that, during the past several decades, societal views about capital punishment appear to have changed considerably. Therefore, Judge Alcala would have remanded the question of whether the death penalty should apply to persons found guilty under a theory of party liability.

Regarding the applicant's minimal moral culpability and participation claim, the applicant contended that the jury instructions did not comport with the standard set forth in *Tison*. Under *Tison*, the defendant must exhibit at least reckless indifference towards human life and there must be major participation in the felony offense. *See Tison*, 481 U.S. at 152. Judge Alcala determined that the jury instructions, arguably, failed to comport with the *Tison* standard because they did not require the applicant's participation to be more than minor. Thus, according to Judge Alcala, this matter should also be remanded to the habeas court to develop an evidentiary basis for the claim.

In his seventh claim, the applicant contended that the death penalty was unconstitutional under the Eight Amendment. Judge Alcala concluded that this claim should be remanded because of the shifting societal views regarding the death penalty. With these comments, Judge Alcala respectfully concurred.

Wright v. State

No. PD-1137-15

Case Summary written by Hillary Hunter, Staff Member.

PRESIDING JUDGE KELLER delivered the opinion of the Court in which JUDGE MEYERS, JUDGE KEASLER, JUDGE HERVEY, JUDGE RICHARDSON and JUDGE YEARY joined.

Appellant Sir Melvin Wright pled guilty to failure to register as a sex offender. This is a state jail felony unless the additional enhancement of a second offense of this crime is proven. The appellant had such conviction, but the indictment did not have an enhancing paragraph, nor was a separate pleading served to allege this. The indictment, although, indicated the crime to be a third degree felony. At the plea hearing, the court informed the appellant that the crime constituted a third degree felony. Upon conviction, the court issued a ten-year prison sentence, but suspended the imposition of the sentence and placed appellant on five years of community service. The State then moved to revoke the community service sentence, and appellant pled true to all allegations in the motion. Appellant appealed from the revocation of community service because the sentence exceeded the time allowed for a state jail felony. He claimed that because the state did not prove a previous conviction, the sentence should reflect a first time charge for failure to register as a sex offender. The Dallas Court of Appeals determined that the appeal of such a revocation, as a collateral appeal, could only touch the original conviction if the conviction was illegal. The Dallas Court of Appeals determined appellant's conviction was not illegal because the previous conviction was available for use as an enhancement.

ISSUE: Did the Court of Appeals err in not allowing a direct appeal on revocation of the original sentence?

The Court of Criminal Appeals determined that the direct appeal of the revocation here was an attack on the original sentence, and

therefore still constituted a collateral attack. Because of this, there are two exceptions to allow a collateral attack on the original sentence: void judgment and habeas corpus. Neither of these existed here as an illegal sentence is not enough to void a judgment, and the habeas corpus route is foreclosed by a lack of harm to appellant.

JUDGE ALCALA filed a concurring opinion in which JUDGE JOHNSON joined.

Judge Alcala concurred with the judgment, but not the analysis of the majority opinion. The court chose to apply habeas law rather than the law for direct appeals, which Judge Alcala opines clearly decides the issue. Appellant's sentence is still not illegal under the law governing direct appeals. Because the sentence is still illegal, the concurrence determines the judgment of the Court of Appeals still stands, but without the habeas review analysis of the majority opinion.

Ex Parte Antonio Sepeda

No. WR-34, 095-24

Case Summary written by Emily Brown, Staff Member.

JUSTICE JOHNSON delivered the unanimous opinion of the Court.

Antonio Sepeda, applicant, was on parole for a 40-year sentence, and during this time was convicted of the felony offense of violating a protective order, for which he was sentenced to eight years in prison. Sepeda applied for parole several times from May 2011 to May 2015, all of which were denied. He was provided written notice each time a request was denied; these letters were all essentially identical. The letters summarized Sepeda's pattern for violent behavior and previous unsuccessful periods of parole.

Sepeda asserts that the language in the letters deny him due process and due course of law by providing numerous reasons for denial, and by using the conjunction "or." Applicant contends that the letter does not conform to Texas Government Code §508.1411, which requires the Board to list the reasons for denial in language that clearly explains the decision by listing reasons specifically related to the individual inmate.

Issues before the Court of Criminal Appeals:

1. Is a writ of habeas corpus the proper remedy for which to compel the Board of Pardons and Paroles to provide a parole-denial letter in compliance with the Texas Government Code §508.1411?
2. Is the applicant entitled to relief?

The court determined that a writ of habeas corpus is the proper remedy for which to compel the Board to provide a parole-denial letter in compliance with the statute.

Applicant sought to use the remedy set out in 37 Texas Administrative Code §145.17, requiring an applicant to request a reconsideration of denial in writing and to provide information not previously available to the parole Board, which includes an allegation that the Board has committed an error of law or board rule.

The court acknowledged that boilerplate recitations of Board guidelines to an applicant are not sufficient to give the required notice of denial under §508.1411. It found that an applicant has a statutory right to be informed of the specific reasons for which parole has been denied.

However, the court found that the record reflected that the Board had since revised its denial letter to conform to the changes made to the statute by the legislature. Thus, applicant received the remedy he sought, and the court denied further relief.