

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

Kevin Lamont Garden v. The State of Texas

No. 05-13-01507-CR (Tex. App.—Dallas Apr. 3, 2015) (mem.) · No. 05-13-01507-CR · Decided July 2, 2015

SUMMARY

Kevin Lamont Garden appealed the adjudication of his guilt for aggravated robbery with a deadly weapon, arguing that the \$2,500 fine in the written judgment should be deleted because the trial court did not orally pronounce a fine. The Court of Appeals for the Fifth District of Texas sustained the issue, modified the judgment to show no fine, and affirmed as modified.

CASE DETAILS

COURT	Court of Appeals for the Fifth District of Texas at Dallas
WRITING FOR THE COURT	David J. Schenck; Justice Lang; Justice Stoddart; Justice Schenck
JURISDICTION	Texas
DECIDED	July 2, 2015
DOCKET	05-13-01507-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment adjudicating guilt and imposing a twelve-year prison sentence for aggravated robbery with a deadly weapon.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Kevin Lamont Garden v. The State of Texas

TOPICS

- criminal procedure
- sentencing
- appellate procedure

PRACTICE AREAS

- Texas criminal procedure
- criminal sentencing
- appellate judgment modification

QUESTIONS PRESENTED

- Whether the written judgment adjudicating guilt could include a \$2,500 fine that the trial court did not orally pronounce.

HOLDINGS

1. When the oral pronouncement of sentence differs from the written judgment, the oral pronouncement controls; therefore, the \$2,500 fine had to be deleted from the written judgment adjudicating guilt.

KEY QUOTATIONS

“When a variation between the oral pronouncement of the sentence and the written memorialization of the sentence exists, the oral pronouncement controls.”

FACTUAL BACKGROUND

Garden pleaded guilty to aggravated robbery with a deadly weapon, specifically a firearm. Following deferred adjudication and community supervision, the trial court adjudicated his guilt after he pleaded true to alleged violations of the supervision conditions. At the adjudication hearing, the court orally imposed twelve years' imprisonment but did not orally impose a fine, although the written judgment included a \$2,500 fine.

PROCEDURAL HISTORY

Garden pleaded guilty and waived a jury, and the trial court initially deferred adjudication, placed him on seven years' community supervision, and assessed a \$2,500 fine. After the State moved to adjudicate guilt based on alleged supervision violations, Garden pleaded true, the court adjudicated him guilty and imposed twelve years' imprisonment, but did not orally pronounce a fine; the written judgment nevertheless included the \$2,500 fine.

DISPOSITION

affirmed

CASES CITED

- Coffey v. State, 979 S.W.2d 326, 329 (Tex. Crim. App. 1998)
- McCoy v. State, 81 S.W.3d 917, 919 (Tex. App.—Dallas 2002, pet. ref'd)
- Bigley v. State, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993)
- Asberry v. State, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref'd)

OPINION

Garden, Kevin Lamont

PER CURIAM.

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AFFIRM; and Opinion Filed April 3, 2015. In The Court of appeals jftftl) Btetrtct of flfexa* at
Ballas; No. 05-13-01507-CR KEVIN LAMONT GARDEN, Appellant V. THE STATE OF
TEXAS, Appellee On Appeal from the 282nd Judicial District Court Dallas County, Texas Trial
Court Cause No. F10-57354-S

MEMORANDUM OPINION

Before Justices Lang, Stoddart, and Schenck Opinion by Justice Schenck Kevin Lamont Garden
appeals his conviction, following the adjudication of his guilt, for aggravated robbery with a
deadly weapon. In a single issue, appellant contends the trial court's judgment should be modified
to delete the fine. The State agrees the fine should be deleted from the judgment. We modify the
trial court's judgment adjudicating guilt and affirm as modified. Appellant waived a jury and
pleaded guilty to aggravated robbery with a deadly weapon, a firearm. See Tex. Penal Code Ann. §
29.03(a)(2) (West 2011). The- trial court deferred adjudicating guilt, placed appellant on seven
years' community supervision, and assessed a \$2,500 fine. The State later moved to adjudicate
guilt, alleging appellant violated several conditions of his community supervision. Following a
hearing at which appellant pleaded true to the allegations, the trial court adjudicated appellant
guilty of aggravated robbery with a deadly weapon and assessed punishment at twelve years'
imprisonment. The trial judge did not orally pronounce a fine. The trial court's judgment
adjudicating guilt, however, includes a \$2,500 fine. When a variation between the oral
pronouncement of the sentence and the written memorialization of the sentence exists, the oral

pronouncement controls. See *Coffey v. State*, 979 S.W.2d 326, 329 (Tex. Crim. App. 1998); see also *McCoy v. State*, 81 S.W.3d 917, 919 (Tex. App.—Dallas 2002, pet. ref d). We sustain appellant's sole issue. We modify the judgment adjudicating guilt to delete the fine. See Tex. R. App. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.—Dallas 1991, pet. refd). As modified, we affirm the trial court's judgment adjudicating guilt. /David J. Schenck/

DAVID J. SCHENCK

JUSTICE

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JUDGMENT

KEVIN LAMONT GARDEN, Appellant Appeal from the 282nd Judicial District Court of Dallas County, Texas (Tr.Ct.No. No. 05-13-01507-CR V. F10-57354-S). Opinion delivered by Justice Schenck, THE STATE OF TEXAS, Appellee . Justices Lang and Stoddart participating. Based on the Court's opinion of this date, the trial court's judgment adjudicating guilt is MODIFIED as follows: The section entitled "Fine" is modified to show "None." As modified, we AFFIRM the trial court's judgment adjudicating guilt. Judgment entered April 3, 2015.