

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.

OPINION

PER CURIAM.

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Opinion Filed April 3, 2015.

In The Court of appeals jftftl) Btetrct 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 Do Not Publish Tex.R. App. P. 47 131507F.U05 Court of Appeals Jftftf)
Btstrct of Qfexa* at ©alias 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.