

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| PRECEDENTIAL VALUE    | nonprecedential                                                                                                                   |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)