

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

OPINION

Garden, Kevin Lamont

PER CURIAM.

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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.