

**COURT OF APPEALS OF TEXAS, SIXTH APPELLATE DISTRICT AT
TEXARKANA**

Gayla Ynell Williams v. State

No. 06-02-00078-CR · No. No. 06-02-00078-CR · Decided July 19, 2002

OPINION

PER CURIAM.

In The Court of Appeals Sixth Appellate District of Texas at Texarkana
_____ No. 06-02-00078-CR _____

GAYLA YNELL WILLIAMS, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 262nd Judicial District Court Harris County, Texas Trial Court No. 886949 Before Morriss, C.J., Grant and Ross, JJ. Opinion by Justice Grant O P I N I O N Gayla Ynell Williams has filed a motion in which she seeks to dismiss her appeal.

Pursuant to Tex. R. App. P. 42.2, her motion is granted. The appeal is dismissed. Ben Z. Grant Justice Date Submitted: July 18, 2002 Date Decided: July 19, 2002 Do Not Publish er, JJ. Memorandum Opinion by Chief Justice Morriss MEMORANDUM OPINION A jury convicted Patrick Eugene Howell of driving while intoxicated, as charged in the indictment.

The jury further found that Howell, on two prior occasions, had been convicted of driving while intoxicated, making Howell eligible for sentencing within the range provided for a third-degree felony. See Tex. Pen. Code Ann. § 49.09(b)(2) (Vernon Supp. 2004–2005). Yet, because Howell further admitted to the jury he had been twice previously and finally convicted of separate felony offenses, as charged in the State's pretrial notice of intent to seek enhanced felony punishment, the trial court further raised Howell's punishment range to that of a first-degree felony, with the minimum sentence being twenty-five years.

See Tex. Pen. Code Ann. § 12.42(d) (Vernon Supp. 2004–2005) (enhanced punishment for felony offender twice previously convicted of felony other than state jail). The trial court sentenced Howell to twenty-five years' imprisonment, in accordance with the jury's recommendation.

On appeal, Howell contended the State's pretrial notice "failed to include any allegations of the sequence or finality of the convictions as required" by Section 12.42(d) of the Texas Penal Code and that the evidence was therefore legally insufficient to establish his "habitual offender" status.

We originally affirmed Howell's conviction after finding Howell failed to preserve the notice-defect issue for appellate review. See Howell v. State, No. 06-03-00031-CR, 2004 Tex. App. LEXIS 3691, at 3–4 (Tex. App.—Texarkana Apr. 28, 2004) (mem. op.) (not designated for publication).

On discretionary review, the Texas Court of Criminal Appeals reversed—saying this Court erred by not addressing Howell's argument "that the evidence was legally insufficient to prove that he was susceptible to punishment as a habitual offender"—and remanded the case to this Court to address solely the legal sufficiency of the evidence. *Howell v. State*, No. PD-0832-04, slip op. at 3–4 (Tex.

Crim. App. Mar. 9, 2005) (not designated for publication). For the reasons stated below, we again affirm the trial court's judgment. Howell contends that "[t]he evidence is legally insufficient to demonstrate that the Appellant was eligible for punishment as a 'habitual offender' pursuant to Section 12.42(d), Texas Penal Code," and that the State failed to prove the order of finality of the felony enhancement convictions.

In reviewing the legal sufficiency of the evidence, we are to determine whether "a rational trier of fact could have found beyond a reasonable doubt" that the enhancement convictions, and their sequencing as required by the statute, are true. See *Coleman v. State*, 145 S.W.3d 649, 652 (Tex. Crim. App. 2004); see also *Fluellen v. State*, 104 S.W.3d 152, 159–60 (Tex.

App.—Texarkana 2003, no pet.) (applying legal sufficiency standard in challenge to proof of punishment enhancement). Driving while intoxicated—subsequent offense is a third-degree felony, Tex. Pen. Code Ann. § 49.09(b)(2), and carries a punishment range of between two and ten years' imprisonment. Tex. Pen. Code Ann. § 12.34 (Vernon 2003). If it is shown on the trial of a felony offense... that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction he shall be punished by imprisonment... for any term of not more than 99 years or less than 25 years.

Tex. Pen. Code Ann. § 12.42(d). At trial, the State introduced into evidence certified documents relating to eight of Howell's prior convictions. Howell did not object to this evidence. One document showed that, on March 20, 1986, Howell was convicted and sentenced in the 115th Judicial District Court of Upshur County to ten years' imprisonment for the felony offense of forgery, which had been committed on January 29, 1986.

Another document showed that on April 17, 1989—after Howell's sentence became final for the Upshur County forgery—Howell committed the felony offense of unauthorized use of a motor vehicle, for which—on November 10, 1989, in Criminal District Court Number 5 of Dallas County—he was convicted and sentenced to ten years' imprisonment.

In addition to the State's evidence, Howell made a judicial confession in front of the jury that he had, in fact, been previously convicted of both of those felony offenses. Thus, the jury had before it evidence that Howell had previously been convicted of two felonies and that the first felony conviction had become final before the commission and conviction of the second felony offense.

The evidence is, therefore, legally sufficient to support Howell's sentence as a habitual offender. For the reasons stated, we affirm the trial court's judgment. Josh R. Morriss, III Chief Justice Date Submitted: May 4, 2005 Date Decided: July 8, 2005 Do Not Publish

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