

TENTH COURT OF APPEALS OF TEXAS

Katherine Elizabeth Jones v. the State of Texas

No. 10-21-00286-CR (Tex. App.—Waco Jan. 4, 2023) (mem.) · No. No. 10-21-00286-CR · Decided January 4, 2023

SUMMARY

The Texas Tenth Court of Appeals affirmed as modified Katherine Elizabeth Jones’s convictions following her guilty pleas to possession of tetrahydrocannabinol with intent to deliver and possession of marijuana. The court held that Jones’s judicial confession satisfied Texas Code of Criminal Procedure article 1.15 and modified the judgment to correct the statutory citation for Count 1.

CASE DETAILS

COURT	Tenth Court of Appeals of Texas
WRITING FOR THE COURT	Tom Gray, Chief Justice; Justice Johnson; Justice Smith
JURISDICTION	Texas
DECIDED	January 4, 2023
DOCKET	No. 10-21-00286-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jones appealed judgments following guilty pleas to possession of a controlled substance with intent to deliver and possession of marijuana. She challenged the sufficiency of the evidence supporting Count 1 under Texas Code of Criminal Procedure article 1.15 and asserted that the judgment misstated the statutory provision of conviction.
STANDARD OF REVIEW	After a guilty plea, appellate review is confined to determining whether sufficient evidence supports the trial court's judgment of guilt. The appellate court may modify the judgment to make it speak the truth when the necessary information appears in the record.
PRECEDENTIAL VALUE	Unpublished, nonprecedential memorandum opinion; do not publish.
PARTIES	Katherine Elizabeth Jones v. The State of Texas

TOPICS

- criminal procedure
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

Texas criminal law

criminal procedure

appellate procedure

criminal evidence

QUESTIONS PRESENTED

1. Whether Jones's judicial confession was sufficient under Texas Code of Criminal Procedure article 1.15 to support her guilty-plea conviction for possession of tetrahydrocannabinol with intent to deliver.
2. Whether the appellate court should modify the Count 1 judgment to identify the correct statutory provision of conviction.

HOLDINGS

1. A judicial confession that covers all elements of the charged felony offense is sufficient under Texas Code of Criminal Procedure article 1.15 to support a conviction based on a guilty plea, and Jones's confession covered all elements of Count 1.
2. The appellate court may modify a judgment to make it speak the truth when the record contains the necessary information, and the Count 1 judgment should be modified to reflect conviction under Texas Health and Safety Code section 481.113(a) and (d).

KEY QUOTATIONS

“So long as such a judicial confession covers all of the elements of the charged offense, it will suffice to support the guilty plea.” (2)

“Based on a review of the record, Jones’s judicial confession, standing alone, supports the trial court’s judgment.” (2)

“We have the authority to make the judgment speak the truth when we have the necessary information to so do in the record.” (3)

FACTUAL BACKGROUND

Jones pleaded guilty to possessing four grams or more but less than four hundred grams of tetrahydrocannabinol, with intent to deliver, and to possessing marijuana. In her plea paperwork, she judicially confessed to committing Count 1 exactly as charged in the indictment, and she also orally confirmed that the indictment's allegations were true and factually correct. The judgment incorrectly identified the statutory provision for Count 1 as section 481.114(A)(D), rather than section 481.113(a) and (d).

PROCEDURAL HISTORY

Jones pleaded guilty in the 413th District Court of Johnson County, Texas. The trial court assessed forty years' imprisonment for Count 1 and two years in state jail for Count 2, with concurrent sentences. On appeal, the court considered the Count 1 sufficiency challenge and modified the judgment to correct the statutory citation, affirming it as modified.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

No remand was ordered. The Count 1 judgment was modified to reflect conviction under Texas Health and Safety Code section 481.113(a) and (d), and the judgment was affirmed as modified.

CASES CITED

- Galindo v. State, 564 S.W.3d 223, 226 (Tex. App.—Houston [1st Dist.] 2018, no pet.)
- Keller v. State, 125 S.W.3d 600, 605 (Tex. App.—Houston [1st Dist.] 2003), pet. dismiss'd, improvidently granted, 146 S.W.3d 677 (Tex. Crim. App. 2004) (per curiam)
- Perryman v. State, 159 S.W.3d 778, 787 (Tex. App.—Waco 2005, no pet.)
- Menefee v. State, 287 S.W.3d 9, 13 (Tex. Crim. App. 2009)
- Dinnery v. State, 592 S.W.2d 343, 353 (Tex. Crim. App. 1979) (op. on reh'g)
- Bigley v. State, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993)
- Asberry v. State, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd)

OPINION

PER CURIAM.

IN THE TENTH COURT OF APPEALS No. 10-21-00286-CR KATHERINE ELIZABETH JONES, Appellant v. THE STATE OF TEXAS, Appellee From the 413th District Court Johnson County, Texas Trial Court No. DC-F201800546 MEMORANDUM OPINION Katherine Elizabeth Jones pled guilty to one count of possession of a controlled substance (TCH), four grams or more but less than 400 grams, with the intent to deliver (Count 1) and one count of possession of marijuana (Count 2).

1 The trial court assessed 1 Although Jones's retained counsel filed a notice of appeal "from the judgments of conviction and sentences rendered against Defendant....includ[ing] Counts 1 and 2...", no issue is raised concerning Count 2.

In written correspondence received from counsel, counsel confirmed that after careful review of the record, counsel could find no arguable issue to present regarding Count 2. Because counsel is retained, a motion to withdraw and brief in support is not required.

However, counsel's notice of appeal indicated that both convictions would be appealed. We will consider counsel's communication to the Court as a waiver of the intent to appeal the judgment as to Count 2. Jones's punishment at 40 years in prison for Count 1 and two years in State Jail for Count 2.

The sentences were ordered to run concurrently. Although the trial court only certified Jones's right to appeal her punishment, in one issue, Jones asserts her plea of guilty to Count 1 was insufficient to support her conviction because her admission did not satisfy article 1.15 of the Texas Code of Criminal Procedure. Specifically, she contends the evidence was insufficient because her plea did not encompass an admission of guilt as to possession with the intent to deliver THC.

Because her judicial confession met the requirements of article 1.15, we affirm the trial court's judgment. A defendant who pleads guilty in a criminal prosecution generally waives his right to challenge the sufficiency of the evidence. *Galindo v. State*, 564 S.W.3d 223, 226 (Tex. App.—Houston [1st Dist.] 2018, no pet.); *Keller v. State*, 125 S.W.3d 600, 605 (Tex.

App.—Houston [1st Dist.] 2003), pet. dism'd, improvidently granted, 146 S.W.3d 677 (Tex. Crim. App. 2004) (per curiam). In such cases, our review is confined to determining whether sufficient evidence supports the trial court's judgment of guilt. *Id.* When a defendant waives his right to a jury and enters a plea of guilty to a felony, the Code of Criminal Procedure requires the State to introduce evidence into the record showing the guilt of the defendant to serve as the basis for the trial court's judgment.

TEX. CODE CRIM. PROC. art. 1.15; *Perryman v. State*, 159 S.W.3d 778, 787 (Tex. App.—Waco 2005, no pet.). So long as such a judicial confession covers all of the elements of the charged offense, it will suffice to support the guilty plea. *Menefee v. State*, 287 S.W.3d 9, 13 (Tex. Crim. App. 2009). See *Dinnery v. State*, 592 S.W.2d 343, 353 (Tex. Crim. App. 1979) (op. on *Jones v. State* Page 2 reh'g) (“a judicial confession, standing alone, is sufficient to sustain a conviction upon a guilty plea (citations omitted), and to satisfy the requirements of Article 1.15....”); *Perryman*, 159 S.W.3d at 787.

No evidentiary support is needed. See *Galindo*, 564 S.W.3d at 226. As part of her guilty plea paperwork, Jones judicially confessed to “committing the offense(s) of CT I: possession of a controlled substance PG2, 4-400 grams with intent to deliver... exactly as charged within the indictment or information...” The indictment charged that Jones “**INTENTIONALLY OR KNOWINGLY POSSESS[ED], WITH INTENT TO DELIVER, A CONTROLLED SUBSTANCE, NAMELY, TETRAHYDROCANNABINOL, IN AN AMOUNT OF FOUR GRAMS OR MORE BUT LESS THAN FOUR HUNDRED GRAMS, INCLUDING ANY ADULTERANTS OR DILUTANTS.**” Thus, the confession covered all of the elements of the charged offense.

Jones also orally confessed that the allegations in the indictment were true and factually correct. Based on a review of the record, Jones's judicial confession, standing alone, supports the trial court's judgment. Jones's issue is overruled. Jones has also presented a sub-issue of nonreversible error, that the judgment in Count 1 incorrectly reflects that Jones was convicted pursuant to section

“481.114(A)(D)” of the Texas Health and Safety Code when she was convicted pursuant to section 481.113(a) & (d) of the Texas Health and Safety Code.

The State concedes that the judgment is incorrect and should be modified. We have the authority to make the judgment speak the truth when we have the necessary information to so do in the record. See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); *Jones v. State* Page 3 *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd).

Thus, we modify the trial court’s judgment in Count 1 to reflect a conviction pursuant to section 481.113(a) & (d) of the Texas Health and Safety Code. As modified, the trial court’s judgment is affirmed. TOM GRAY Chief Justice Before Chief Justice Gray, Justice Johnson, and Justice Smith Affirmed as modified Opinion delivered and filed January 4, 2023 Do not publish [CRPM] *Jones v. State* Page 4