

May 29, 2014

ABEL ACOSTA, CLERK

Transmitted 5/29/2014 10:31:41 AM
Accepted 5/29/2014 2:04:09 PM
ABEL ACOSTA
CLERK

No. PD-1215-13

In the
Court of Criminal Appeals
At Austin

No. 01-10-00341-CR

In the
Court of Appeals
For the
First District of Texas
At Houston

No. 1196446

In the 178th District Court
Of Harris County, Texas

CAMERON MOON

Appellant

V.

THE STATE OF TEXAS

Appellee

STATE'S POST-SUBMISSION BRIEF

DEVON ANDERSON
District Attorney
Harris County, Texas

DAN MCCRORY
Assistant District Attorney
Harris County, Texas

1201 Franklin, Suite 600
Houston, Texas 77002
Tel.: 713/755-5826
FAX No.: 713/755-5809
Counsel for Appellee

TABLE OF CONTENTS

INDEX OF AUTHORITIES	ii
FIRST GROUND FOR REVIEW	1
CONCLUSION	8
CERTIFICATE OF SERVICE.....	8
CERTIFICATE OF COMPLIANCE	9

INDEX OF AUTHORITIES

CASES

<i>In re J.R.W.</i> , 879 S.W.2d 254 (Tex. App.--Dallas 1994, no writ)	3
<i>In re K.T.</i> , 107 S.W.3d 65 (Tex. App.--San Antonio 2003, no pet.).....	2
<i>Moon v. State</i> , 410 S.W.3d 366 (Tex. App.--Houston [1st Dist.] 2013, pet. granted)	1, 4, 5, 6
<i>Rosales v. State</i> , 841 S.W.2d 368 (Tex. Crim. App. 1992)	6
<i>Thomas v. State</i> , No. PD-0121-13, 2014 WL 1464849 (Tex. Crim. App. April 16, 2104).....	4

STATUTES

TEX. FAM. CODE ANN. § 54.02 (West 2014).....	1, 4
--	------

TO THE HONORABLE COURT OF CRIMINAL APPEALS OF TEXAS:

The parties presented oral argument before this Court on May 7, 2014. The State presents this post-submission brief in order to provide additional authority and argument on matters discussed during those arguments.

FIRST GROUND FOR REVIEW

In its first ground for review before this Court, the State argued that the First Court of Appeals applied the wrong appellate standard for reviewing the trial judge's findings on the factors listed in section 54.02(f) of the Texas Family Code. TEX. FAM. CODE ANN. § 54.02(f) (West 2014). The court of appeals correctly determined that a trial judge's findings are reviewed for an abuse of discretion, but employed a legal and factual sufficiency of the evidence analysis (as conducted in civil cases) to determine whether an abuse of discretion had occurred. *Moon v. State*, 410 S.W.3d 366, 370-71 (Tex. App.--Houston [1st Dist.] 2013, pet. granted). In its briefing before this Court, the State maintained that a *criminal* sufficiency analysis, rather than a *civil* sufficiency analysis, was the proper sufficiency standard to incorporate within the settled abuse-of-discretion standard. (State's PDR, P. 3). In its oral argument before this Court, the State modified its position by arguing that there was no need to impose any type of sufficiency-of-the-evidence analysis onto the abuse-of-discretion standard. Rather, the well-settled,

abuse-of-discretion standard should stand on its own, without resorting to or incorporating any type of sufficiency-of-the-evidence analysis.

At least two intermediate appellate courts have ruled that the abuse-of-discretion standard, without regard for standards of evidentiary sufficiency review, is the proper appellate standard for reviewing juvenile court rulings. In *K.T.*, the defendant complained that the juvenile court judge abused his discretion in committing him to the Texas Youth Commission (TYC) until his twenty-first birthday. *In re K.T.*, 107 S.W.3d 65, 66-67 (Tex. App.--San Antonio 2003, no pet.) (en banc). Before committing a juvenile to TYC, the juvenile judge must consider certain statutory factors and make certain findings relating to the factors. *Id.* at 68. The defendant specifically complained that there was little evidentiary support for one of the statutory fact findings made by the trial judge. *Id.* at 72.

The San Antonio Court of Appeals acknowledged that, in the past, it and other courts of appeals had held that although this type of juvenile court order is reviewed for an abuse of discretion, the trial judge's fact findings are reviewed for legal and factual sufficiency of the evidence. *Id.* at 72. The Court concluded, however, that the application of the legal and factual sufficiency standards of review in this context is inappropriate. *Id.* at 73.

The Court explained that employing an abuse-of-discretion standard divorced from the standards of evidentiary review serves two important objectives.

First, the absence of a factual sufficiency standard affords significantly more deference to the trial judge's factual determinations, which is appropriate since the judge is in a superior position to judge witnesses' credibility and demeanor. *Id.* Second, the abuse-of-discretion standard permits the appellate court to review questions of law de novo, which tends to unify precedent since legal rules acquire content only through application and which enables appellate courts to maintain control of and to clarify the legal principles. *Id.* at 74. Based on these "fundamental precepts of appellate review, [the San Antonio Court of Appeals held] that the criminal abuse of discretion standard – divorced from evidentiary standards of legal and factual sufficiency – applies to a trial court's juvenile disposition order." *Id.* at 74-75.

Similarly, in *J.R.W.*, the Dallas Court of Appeals reviewed a juvenile trial judge's order that transferred a juvenile defendant from the TYC to adult prison. *In re J.R.W.*, 879 S.W.2d 254, 255 (Tex. App.--Dallas 1994, no writ). The court of appeals determined that such a transfer was within the discretion of the trial judge and, therefore, the judge's order was reviewed under an abuse-of-discretion standard. Significantly, the court further explained that "[u]nder an abuse of discretion review, we do not review factual issues decided by the trial court under legal or factual-sufficiency standards." *Id.* at 257.

Like the *K.T.* Court and the *J.R.W.* Court, the First Court of Appeals should have reviewed the trial court's rulings on the section 54.02(f) factors under the well-settled abuse-of-discretion standard, without resorting to the sufficiency standards. The Court should have reviewed the juvenile judge's findings by simply applying the traditional criminal law principles that relate to the abuse-of-discretion standard. Under this standard, an appellate court examines "whether the trial court acted without reference to any guiding rules or principles" after viewing the evidence in the light most favorable to the trial judge's ruling, deferring to the trial judge's credibility determinations, and presuming that all reasonable fact findings in support of the ruling were made. *Thomas v. State*, No. PD-0121-13, 2014 WL 1464849, at *2 (Tex. Crim. App. April 16, 2104).

If the court below had properly applied this standard of review, it very likely would have reached a different result regarding its review of the trial judge's finding on the subsection (f) factor relating to appellant's amenability to rehabilitation. TEX. FAM. CODE ANN. § 54.02(f)(4) (West 2014). In finding the trial judge's fact finding on this statutory factor erroneous, the appellate court relied heavily on statements from appellant's psychiatric expert and his probation officer, who both opined that appellant was amenable to treatment. *Moon*, 410 S.W.3d at 376-77. However, the trial judge obviously disbelieved these two witnesses since the judge expressly found that there was little, if any, likelihood

that appellant was amenable to rehabilitation. (CR 4). If the court of appeals had properly considered the trial judge's fact finding under an abuse of discretion, it would not have credited this testimony that the trial judge obviously disbelieved. Rather, the court of appeals would have deferred to the trial judge's credibility determinations.¹

Similarly, the court of appeals found that appellant's prior adjudication for "keying" a car was of little consequence because it was "a non-violent act" and a "low-level misdemeanor mischief offense against property." *Moon*, 410 S.W.3d at 377. However, the significance of appellant's prior adjudication for criminal mischief relative to the rehabilitation factor was not the seriousness of the offense or the violent nature of the offense. Rather, the significance of this evidence was the fact that appellant, prior to the murder, had been placed on probation as a result of the misdemeanor offense and had participated in rehabilitative classes designed to curb his anger. (RR 89-90). And despite these rehabilitative efforts, appellant still committed a murder. Evidence of a previous failed attempt to rehabilitate appellant was significant to the trial judge's evaluation of appellant's current amenability to rehabilitation at the certification hearing. The appellate court's reweighing of the significance of appellant's prior adjudication so as to minimize its import conflicts with a proper application of the abuse-of-discretion standard

¹ Of course, the court of appeals should have deferred to the trial judge's credibility

which prohibits an appellate reweighing of the evidence. *Rosales v. State*, 841 S.W.2d 368, 375 (Tex. Crim. App. 1992) (“under an abuse of discretion standard it is not our role to reweigh the factors”).

Finally, in examining the trial judge’s fact finding on the rehabilitation factor, the court of appeals discounted the fact that appellant had been written up four times for infractions at the juvenile facility where he was housed following his arrest for the murder. *Moon*, 410 S.W.3d at 377. The appellate court was dismissive of this evidence because the probation report offered no details about these write ups. *Id.* Actually, the probation report describes the infractions as follows:

1. August 27 - “Room Restriction (Restrained) Attempting physical altercation”
2. August 28 - “Room Restriction Physical altercation”
3. September 24 - “Room Restriction (Restrained) Attempting to fight another resident”
4. November 12 - “Room Restriction Contraband

(RR I – Petitioner’s exhibit 1).

The record, therefore, indicates appellant was involved in fights and physical altercations following his arrest. Appellant’s continued misconduct following his arrest is probative evidence of his amenability to rehabilitation. As such, the appellate court’s attempt to downplay this evidence constitutes an improper

determinations under a sufficiency analysis as well.

reweighing of the evidence, which is contrary to a proper appellate review under the abuse-of-discretion standard.

Accordingly, the State prays that this Court hold that the juvenile judge's fact findings relating to the section 54.02(f) factors are subject to appellate review under the abuse-of-discretion standard – divorced from any type of sufficiency-of-the-evidence standard – and remand this cause to the court of appeals for a proper analysis under such standard.

CONCLUSION

It is respectfully requested that the court of appeals' judgment be reversed and the cause be remanded to that court for further consideration.

DEVON ANDERSON

District Attorney
Harris County, Texas

/s/ Dan McCrory

DAN McCRORY

Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
(713) 755-5826
TBC No. 13489950
McCrory_Daniel@dao.hctx.net

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been mailed to the following addresses:

Jack G. Carnegie
Attorney at Law
909 Fannin Street, Suite 2300
Houston, Texas 77010-1036

David Adler
Attorney at Law
6750 West Loop South, Suite 120
Bellaire, Texas 77401

John L. Hagan
Attorney at Law
3900 Essex, Suite 700
Houston, Texas 77027

Christene Wood
Attorney at Law
One Riverway, Suite 1600
Houston, Texas 77056

Lisa C. McMinn
State Prosecuting Attorney
P. O. Box 13046
Capitol Station
Austin, Texas 78711

/s/ Dan McCrory
DAN McCRORY
Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
(713) 755-5826
TBC No. 13489950

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this computer-generated document has a word count of 1,390 words, based upon the representation provided by the word processing program that was used to create the document.

/s/ Dan McCrory
DAN McCRORY
Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
(713) 755-5826
TBC No. 13489950

Date: 5/29/2014