

Affirmed and Opinion filed February 10, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00821-CR

PLACIDO SEBASTIAN CASTRO, Appellant

V.

THE STATE OF TEXAS , Appellee

**On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause No. 761, 957**

OPINION

Placido Sebastian Castro, appellant, was charged with injury to a child. He entered a guilty plea and was sentenced to forty years in the Texas Department of Criminal Justice, Institutional Division. Castro appeals the conviction in three points of error. We affirm the trial court's judgment.

In his first point of error, Castro argues his plea was involuntary. To determine whether the plea was entered voluntarily, the entire record must be considered. *See Williams v. State*, 522 S.W.2d 483, 485 (Tex. Crim. App. 1975). Plus, when an appellant states at the plea hearing that his plea is knowing and voluntary, the burden shifts to appellant to show that he

entered the plea without understanding the consequences of the plea. *See Fuentes v. State*, 688 S.W.2d 542, 544 (Tex. Crim. App. 1985); *Richard v. State*, 788 S.W.2d 917, 920 (Tex. App.–Houston [1st Dist.] 1990, no pet.).

Because Castro waived a court reporter at the plea hearing, he has failed to bring forward any evidence to show he did not enter his plea voluntarily. Because he did not meet this burden, we must presume Castro was properly admonished and his plea was entered knowingly and voluntarily. *See Miller v. State*, 879 S.W.2d 336, 338 (Tex. App.–Houston [14th Dist.] 1994, pet. ref'd) (holding that record showing defendant received proper admonishments is prima facie showing that guilty plea was knowing and voluntary). Accordingly, we overrule Castro's first point of error.

In his second point of error, Castro argues the court erred in disregarding his testimony at the pre-sentencing hearing as evidence he did not freely and knowingly enter his guilty plea. Castro argues his pre-sentence hearing testimony, which was recorded, reveals his confusion regarding the terms of the plea agreement and he claimed he was innocent of the charges. However, "when a plea of guilty is before the court it need not be withdrawn and a plea of not guilty entered when evidence is introduced that might reasonably and fairly raise the issue of fact as to the guilt of the defendant." *McKinney v. State*, 709 S.W.2d 328, 331 (Tex. App.–Houston [14th Dist.] 1986, no pet.) (citing *Sullivan v. State*, 573 S.W.2d 1, 4 (Tex. Crim. App. 1978)). Rather, "[t]he trial judge as the trier of facts may without withdrawing the plea decide the issue either finding the defendant not guilty or guilty as [the trial judge] believes the facts require." *Id.* Thus, the trial judge was under no duty to withdraw Castro's guilty plea. Accordingly, his second point of error is overruled.

In Castro's third point of error, he argues because he is illiterate and speaks only Spanish, the trial court erred in assuming the admonishment, terms, waivers and agreements were understood. We disagree. The record does not support Castro's argument that the trial court assumed the admonishments and waivers were fully understood. The same trial judge was present at both the plea proceeding and the pre-sentencing investigation hearing, and was

therefore present to gauge Castro's understanding of the plea and the credibility of the statements at the PSI hearing. Additionally, it is apparent from the record, Castro's attorney spoke Spanish and a Spanish-speaking interpreter was utilized at the sentencing hearing. Thus, there is nothing in the record to demonstrate the trial court and his attorney did not properly admonish Castro in Spanish. *See Breazeale v. State*, 683 S.W.2d 446, 450 (Tex. Crim. App. 1984) *Moussazadeh v. State*, 962 S.W.2d 261, 264 (Tex. App.—Houston[14th Dist.] 1998, pet. ref'd); *see also Jones v. State*, 646 S.W.2d 449 (Tex. Crim. App. 1983) (where procedural requirements do not affirmatively appear in record to have been violated, presumption of regularity prevails). Accordingly, Castro's third point of error is overruled.

Having overruled all of Castro's points of error, we affirm the trial court's judgment.

Sam Robertson
Justice

Judgment rendered and Opinion filed February 10, 2000.

Panel consists of Justices Robertson, Sears,, and Cannon*.

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Sam Robertson, Ross A. Sears, and Bill Cannon sitting by assignment.