Affirmed and Opinion filed September 27, 2001.

In The

Fourteenth Court of Appeals

NOS. 14-00-00171-CR & 14-00-00172-CR

DOROTHY LOU ANDERSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 209th District Court
Harris County, Texas
Trial Court Cause Nos. 755,950 & 817,248

O P I N I O N

In a single brief, appellant, Dorothy Lou Anderson, challenges two convictions for felony theft. Appellant was charged by indictment with the state jail felony offense of theft of welfare benefits. Appellant entered a plea of guilty to the offense, and the trial court sentenced appellant to 180 days confinement in the Harris County Jail. In three points of error, appellant contends: (1) the evidence was insufficient to sustain her conviction; (2) the trial court was required to suspend appellant's sentence pursuant to former article 42.12, section 15 of the Texas Code of Criminal Procedure; and (3) the trial court incorrectly admonished appellant, thus abridging her constitutional right to due process of law. In a separate cause, appellant was charged by indictment with felony theft of cash. Appellant

entered a plea of guilty to the offense and the trial court sentenced her to one year confinement in a state jail facility. In a single point of error, appellant contends the evidence is insufficient to sustain her conviction. We affirm both convictions.

Appellant's first point of error challenging her conviction for theft of benefits, and her single point of error challenging her conviction for theft of cash, both assert that the evidence is insufficient to sustain her convictions because there is a variance between the dates of the offenses alleged in the indictments and the dates set out in appellant's judicial confessions. In a hearing held subsequent to the submission of this appeal, the trial court determined that the second pages of appellant's judicial confessions were accidentally transposed. Consequently, the trial court issued orders requiring the court reporter to correct the error. Because the records have been corrected, these points of error and are overruled.

In her second point of error challenging her conviction for theft of welfare benefits, appellant contends that the trial court erred in sentencing her to 180 days in the Harris County Jail. Appellant asserts that the trial court was required to suspend her sentence and place her on community supervision. The trial court sentenced appellant as a Class B misdemeanor offender pursuant to former section 12.44 of the Texas Penal Code. Act of May 29, 1993, 73rd Leg., R.S., ch. 900, sec. 1.01, § 12.44(a), 1993 Tex. Gen. Laws 3586, 3605, *amended by* Act of May 29, 1995, 74th Leg., ch. 318, sec. 3, § 12.44(a), 1995 Tex.Gen. Laws 2734, 2735 (current version at TEX. PEN. CODE ANN. § 12.44(a) (Vernon Supp. 2001)). The former version of the statute allows trial courts, when imposing sentence upon individuals convicted of state jail felonies which occurred during the effective dates of the statute, to sentence them as Class B misdemeanor offenders if the court determines "that such punishment would best serve the ends of justice." *Id*. The current statute allows trial courts to sentence state jail felons as Class A misdemeanor offenders. TEX. PEN. CODE ANN. § 12.44 (Vernon Supp. 2001). Relying on a spurious interpretation of *State v. Mancuso*, 919 S.W.2d 86 (Tex. Crim. App. 1996), appellant contends the trial court was required to suspend appellant's sentence pursuant to former article 42.12, section 15 of the Texas Code of Criminal Procedure. The version of article 42.12, section 15 in effect at the

time appellant committed the offense stated that a trial court, when sentencing someone as a state jail felon, shall suspend the imposition of the sentence and place the defendant on community supervision. Act of May 29, 1993, 73rd Leg., R.S., ch. 900, sec. 4.01, art. 42.12, § 15, 1993 Tex. Gen. Laws 3586, 3731, *amended by* Act of May 28, 1995, 74th Leg., R.S., ch. 318, § 60, 1995 Tex. Gen. Laws 2734, 2754-55 (current version at TEX. CODE CRIM. P. ANN. art. 42.12, § 15 (Vernon Supp. 2001)). Appellant contends that *State v. Mancuso* holds that former article 42.12 supercedes former section 12.44 and required the trial court to suspend her sentence. We disagree.

When interpreting a statute, we seek to effectuate the collective intent of the legislators who enacted the statute by giving effect to the plain meaning of the statutory text, unless application of the statute's plain meaning would lead to absurd consequences. *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). The Code Construction Act defines the analysis employed when we are asked to determine the relationship between conflicting general and specific statutory provisions. TEX. GOV'T CODE ANN. § 311.026 (Vernon 1998). Section 311.026 is a codification of the common law doctrine of *in pari materia*. The doctrine of *in para materia* requires us to attempt to construe the statutes so that effect is given to both. *Burke v. State*, 28 S.W.3d 545, 546 (Tex. Crim. App. 2000). Prior to the application of the doctrine of *in para materia*, we must first determine if the two statutes are actually *in para materia*. *Id*. at 547. For the doctrine to apply, the two statutes must have been enacted with the same purpose in mind, and they must be closely enough related to warrant interpreting one in light of the other. *Id*. The two statutes in question are not *in para materia* and do not conflict. They are two different legislative acts designed to serve different purposes and objectives. One allows convicted felons to escape the harsh penalty attached to a felony conviction and the other defines how a trial court may mete out a felony sentence. It would be nonsensical to allow convicted felons to reap the benefit of a misdemeanor sentence pursuant to former section 12.44 *and* receive the benefit of having the imposition of the misdemeanor sentence mandatorily suspended pursuant to former article 42.12. Accordingly, we find that section 15 of former article 42.12 does not apply

to state jail felons sentenced as Class B misdemeanor offenders. Thus, the trial court's sentencing appellant to 180 days in the Harris County Jail pursuant to former section 12.44 of the Penal Code does not impugn former article 42.12 of the Code of Criminal Procedure. Appellant *was* convicted of a state jail felony, *but*, pursuant to former section 12.44, sentenced as a Class B misdemeanor offender. Consequently, we find the requirement imposed by former article 42.12 that trial courts suspend the sentences of those convicted of state jail felonies is inapplicable to individuals convicted of state jail felonies and sentenced as misdemeanor offenders pursuant to former section 12.44. We overrule appellant's second point of error.

In her third point of error, appellant contends she was incorrectly admonished at the time of her guilty plea. Appellant alleges that at the time of her plea she was given a written admonishment that incorrectly stated that upon her conviction for a state jail felony offense the period of confinement must be suspended and she must be placed on community supervision. Appellant argues that this incorrect admonishment contravened her constitutional right to due process of law. This contention is not supported by the record. The written admonishment appellant signed on October 27, 1999, the day she entered her plea of guilty, included a distinct, separately initialed section informing her that she could be sentenced to 180 days in the county jail pursuant to section 12.44 of the Penal Code. Accordingly, appellant's due process argument is without merit.

The trial court's judgments are affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed September 27, 2001.
Panel consists of Justices Anderson, Hudson, and Seymore.
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