AFFIRMED as Modified; Opinion Filed June 4, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00393-CR

LADARIUS DAVON TITUS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 2
Dallas County, Texas
Trial Court Cause No. F17-59118-I

MEMORANDUM OPINION

Before Justices Myers, Whitehill, and Pedersen, III
Opinion by Justice Myers

Appellant was indicted for aggravated assault with a deadly weapon. *See* TEX. PENAL CODE ANN. § 22.02(a)(2). He waived a trial by jury, judicially confessed to the offense, and entered an open plea of guilty. After hearing punishment-related evidence, the trial court found appellant guilty of the charged offense and sentenced him to twelve years in prison. In one issue, appellant contends the judgment incorrectly includes a deadly weapon finding. The State brings a cross-point seeking a separate modification of the judgment. As modified, we affirm.

DISCUSSION

In his only point of error, appellant argues the deadly weapon finding should

not have entered in the judgment because it was not orally pronounced at sentencing. Appellant asks us to delete the deadly weapon finding from the judgment. The State responds that the judgment correctly includes the deadly weapon finding but that there is an error in the judgment that should be corrected, and we agree.

"An affirmative deadly-weapon finding must be an 'express' determination in order to be effective." *Guthrie-Nail v. State*, 506 S.W.3d 1, 4 (Tex. Crim. App. 2015). "Although affirmatively answering a deadly-weapon special issue (jury) or explicitly saying that a deadly-weapon finding is being made (judge) satisfies the express-determination requirement," the Court of Criminal Appeals "has concluded that certain less explicit language also constitutes an express determination." *Id.* "This includes express words, in a verdict or judgment, that refer to a portion of the charging instrument that includes a deadly-weapon allegation." *Id.* "Moreover, in a bench trial, a trial judge need not include a deadly-weapon finding in the oral pronouncement of judgment; if the charging instrument alleged a deadly weapon, the finding may be included for the first time in a written judgment." *Id.* (citing *Ex parte Hawkins*, 176 S.W.3d 818, 821 (Tex. Crim. App. 2005)).

This is precisely what the record in this case shows. The indictment alleged that appellant "did use and exhibit a deadly weapon, to-wit: a FIREARM, during the commission of the assault." Appellant signed a judicial confession admitting to the offense as alleged in the indictment (including that he used and exhibited a deadly weapon, i.e., a firearm, during the commission of the assault), and he entered

an open plea of guilty before the trial court. The trial court found him guilty and assessed the punishment. Although the court did not orally pronounce an affirmative deadly weapon finding when it sentenced appellant, the judgment shows the court made such a finding. Thus, the recitation of an affirmative deadly weapon finding for the first time in the written judgment is not erroneous, and we will not delete it as appellant requests. *See id*. We overrule appellant's sole issue.

One other issue we must address concerns the State's cross-point asking us to modify the judgment. The trial court pronounced appellant's sentence as "12 years in the Institutional Division of the Texas Department of Criminal Justice." But the judgment states, in "Punishment and Place of Confinement," that the sentence was "12 YEARS TDCJ, CORRECTIONAL INSTITUTIONS DIVISION." The docket sheet has pre-printed language included in it stating that "Punishment is assessed at ____ years/month/days confinement in the Institutional Division of the Texas Department of Criminal Justice, State, County Jail." The number "12" is handwritten in the blank for the length of the term of confinement, and the words "years" and "Institutional" are circled by hand.

We have the power to modify an incorrect judgment to make the record speak the truth when we have the necessary information before us to do so. *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.—Dallas 1991, pet. ref'd). In this case, the record reflects that the trial court sentenced appellant to a term of

confinement in the Institutional Division of the TDCJ, not the "Correctional Institutions Division." Accordingly, we modify the judgment to state as follows: "Punishment and Place of Confinement: 12 YEARS TDCJ, INSTITUTIONAL DIVISION."

As modified, we affirm the trial court's judgment.

/Lana Myers/
LANA MYERS
JUSTICE

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TEX. R. APP. P. 47.2(b)
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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

LADARIUS DAVON TITUS, Appellant	On Appeal from the Criminal District Court No. 2, Dallas County, Texas Trial Court Cause No. F17-59118-I.
No. 05-19-00393-CR V.	Opinion delivered by Justice Myers. Justices Whitehill and Pedersen, III participating.
THE STATE OF TEXAS, Appellee	

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

> "Punishment and Place of Confinement: 12 YEARS TDCJ, INSTITUTIONAL DIVISION."

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 4th day of June, 2020.