

AFFIRMED and Opinion Filed June 10, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-00825-CR

**FABIAN SANCHEZ, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 291st Judicial District Court
Dallas County, Texas
Trial Court Cause No. F19-00097-U**

MEMORANDUM OPINION

Before Justices Whitehill, Osborne, and Carlyle
Opinion by Justice Whitehill

Appellant waived his right to a jury trial and made an open guilty plea to aggravated sexual assault of a child. After hearing evidence, the trial court found appellant guilty and sentenced him to twenty years in prison.

In a single issue, appellant argues that his plea was involuntary because the court failed to admonish him regarding possible deportation in violation of TEX. CODE CRIM. PROC. art. 26.13(a)(4). We conclude that the court substantially complied with the statutory requirements by making the required admonishment in writing and affirm the trial court's judgment.

I. BACKGROUND

When his jury trial was scheduled to begin, appellant decided to waive a jury and plead guilty to the charged offense. The court asked whether the plea was voluntary, whether appellant had spoken to counsel, and whether he understood that he was giving up his right to a jury trial. Appellant responded affirmatively. The judge also confirmed that appellant was rejecting the State's plea offer and admonished him on the range of punishment. Appellant and his counsel signed appellant's written plea agreement, which contains the required admonishments.

The court took judicial notice of appellant's signed judicial confession and stipulation of evidence. The court ordered a pre-sentence investigation and the case was reset pending its conclusion.

The court conducted a sentencing hearing approximately one month later and heard testimony from the officer who interviewed appellant, the victim's mother, the victim, and the assistant clinical director for the Children's Advocacy Center. When the evidence concluded, the court found appellant guilty, set punishment at twenty years in prison, and entered judgement accordingly. Appellant timely appeals from that judgment.

II. ANALYSIS

Appellant's sole issue argues that his plea was not voluntary because, according to appellant, the court failed to admonish him regarding possible deportation in violation of TEX. CODE CRIM. PROC. art. 26.13(a)(4). We disagree.

A guilty plea must be entered knowingly, intelligently, and voluntarily in order to be consistent with due process. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). To determine whether the plea was voluntary, we ask whether the plea represented a “voluntary and intelligent choice” available to the defendant. *See Parke v. Raley*, 506 U.S. 20, 29 (1992).

Before accepting a guilty plea, a trial court must provide certain admonitions to the defendant. TEX. CODE CRIM. PROC. art. 26.13(a). Among other things, the trial court must admonish a defendant of “the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law[.]” *Id.* 26.13(a)(4). Under the statutory version governing the admonishments here, the admonishments could be made orally or in writing.¹

A record showing that the trial court duly admonished the defendant presents a prima facie showing that defendant’s plea was voluntary. *Martinez v. State*, 981 S.W.3d 195, 197 (Tex. Crim. App. 1998).

Moreover, “[a] defendant’s sworn representation that his guilty plea is voluntary constitute[s] a formidable barrier” to establishing that a plea was not

¹ Appellant entered his plea on June 17, 2019. Effective September 1, 2019, the admonition required by article 26.13(a)(4) is required to be given both orally and in writing. Act of May 10, 2019, 86th Leg., R.S., Ch. 185, §§ 1–3, 2019 Tex. Sess. Law Serv. Ch. 185 (codified at TEX. CODE CRIM. PROC. ANN. art. 26.13(d), (d-1)).

voluntary, and the defendant was harmed. *See Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006).

Here, appellant was admonished in writing concerning the immigration consequences of pleading guilty and he acknowledged his understanding of the court's admonition and the consequences of his plea. Specifically, he was told that pleading guilty would almost certainly result in his deportation if he is a non-citizen.

These admonitions, along with appellant's statements and waivers constitute substantial compliance with art. 26.13's requirements. *Meraz v. State*, 950 S.W.2d 739, 742 (Tex. App.—El Paso 1997, no pet.). Substantial compliance is sufficient unless the defendant shows he did not understand the consequences of the plea and was harmed or misled by the admonishments given. TEX. CODE CRIM. PROC. art. 26.13(c); *Martinez*, 981 S.W.3d at 197.

Appellant, however, relies on *VanNortrick v. State*, 227 S.W.3d 706, 710–13 (Tex. Crim. App. 2007) to argue that because the record does not reflect his citizenship status, the trial court's purported failure to admonish him is sufficient to establish harm. This reliance is misplaced because there, unlike the written admonishments in the present case, there were no admonishments whatsoever. *See id.* at 707-08.

Because there was substantial compliance with article 26.13(a) and appellant makes no further showing, we need not consider harm. *See Martinez*, 981 S.W.3d at 197 (“A finding that a defendant was duly admonished creates a prima facie

showing that a guilty plea was entered knowingly and voluntarily” and “the burden shifts to the defendant to demonstrate that he did not fully understand the consequences of his plea such that he suffered harm.”).

We resolve appellant’s sole issue against him and affirm the trial court’s judgment.

/Bill Whitehill/
BILL WHITEHILL
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

FABIAN SANCHEZ, Appellant

No. 05-19-00825-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial
District Court, Dallas County, Texas
Trial Court Cause No. F19-00097-U.
Opinion delivered by Justice
Whitehill. Justices Osborne and
Carlyle participating.

Based on the Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

Judgment entered June 10, 2020.