5-2000

Having It All: Pleading Guilty Without Forfeiting the Right to Appeal

Gerald S. Reamey
St. Mary's University School of Law, greamey@stmarytx.edu

MAY. 2000 • VOL 50 • ISSUE 5

DOCKET CALL

THE MONTHLY PUBLICATION OF THE SAN ANTONIO YOUNG LAWYERS ASSOCIATION

Having It All: Pleading Guilty Without Forfeiting The Right To Appeal

by Gerald S. Reamey

Professor of Law, St. Mary's University School of Law

"Motion denied, counselor." Now what? Your suppression motion has been denied. The judge isn't suddenly going to sustain your trial objection when the State introduces the cocaine your client was holding. You don't have another defense; your client is factually guilty and the evidence against her is overwhelming. Do you set the case for an expensive and time-consuming trial, despite the inevitability of conviction? Or can you plead guilty and move on to an appeal of the suppression ruling?

Not surprisingly, courts tend to treat a guilty plea as a waiver of all but the most serious defects. This view is quite defensible as an efficient and just allocation of scarce judicial resources. The guilty-pleading defendant can't have it both ways. She either accepts the conviction and punishment, a punishment usually negotiated before the plea, or she gets to complain about the process, but not both.

On the other hand, it is terribly inefficient to force your client to put the State to trial for no reason other than preserving appeal rights on a pretrial objection. Why not accept her guilty plea subject to appeal of the suppression issue? The State avoids a meaningless trial (which it might lose); the defendant gets appellate review of the only significant legal dispute in the case; and the court saves precious time that can be better spent disposing of other matters on its crowded docket.

Attempts by courts and the legislature to balance these competing interests have produced a confusing and dangerous mix of contradictory rules. Texas Rule of Appellate Procedure ("TRAP") 25.2 is the latest iteration. It provides that appeal may be taken following a *negotiated* guilty plea or nolo contendere plea where the punishment assessed does not exceed the recommended punishment, if "the substance of the appeal was raised by written motion and ruled on before trial."[1] Jurisdictional defects also may be appealed, of course, as may issues on which the trial court grants permission to appeal.[2]

Whatever good intentions led to the enactment of TRAP 25.2, it literally has proven to be a "trap" for the unwary. The rule, along with its predecessor statute and rule, has been seen as a limited exception to the so-called "*Helms* rule." In *Helms v. State,*[3] the Court of Criminal Appeals held that a guilty plea waives all non-jurisdictional defects occurring before the entry of the plea. TRAP 25.2 provides an incentive for the guilty-pleading defendant to negotiate a plea. If he or she does so, matters "raised by written motion[4] and ruled on before trial" may be appealed, even without permission of the trial court.[5] In other words, if a plea bargain can be struck between your client and the prosecutor, the court's ruling on her pretrial suppression motion can be appealed.

Unfortunately, TRAP 25.2 does not apply to all cases. Non-negotiated, or "open," pleas simply are not mentioned. This encourages plea "bargains," especially for the defendant who wants to preserve her appeal right. If a bargain cannot be struck, however, a defendant who enters a plea essentially waives any appeal right she might have had based on TRAP 25.2. A "charge bargain" will not suffice because the rule speaks only of bargains in which the agreed *punishment* was not exceeded; only an agreed bargain on punishment brings the defendant within the rule.[6]

The defendant who gains an advantage under TRAP 25.2 regarding one kind of error finds herself disadvantaged regarding another. The rule does not apply to errors committed during or after the plea is entered. Therefore, a guilty-pleading defendant who wants to complain on appeal about pretrial errors *and* those committed at the plea ceremony or later, is precluded by the rule from appealing the latter unless the trial judge grants permission.

In January of this year, the Court of Criminal Appeals rearranged this minefield in *Young v. State.*[7] *Young* involved a woman who was denied entrance into the United States when she arrived from Belize. In a search at the jail where the woman was to spend the night, officers found cocaine taped to her legs. The defendant's subsequent suppression motion was denied, and she pled guilty *without having reached a plea agreement* with the State. Her appeal from the denial was rejected by the Court of Appeals, which applied the "*Helms* rule," but

Continued on page 2

In This Issue

SAYLA BULLETIN BOARD

✓ *Don't forget to cast your vote in the SAYLA elections. Ballots MUST be received by May 15th.*

✓ *Mark your calendars now for the 2000 SAYLA Annual Golf Tournament to be held on June 2nd. The registration form is on Page 5. For information regarding firm and corporate sponsorships, call Charles Fridge at 734-7092.*

✓ *Volunteers needed for State Bar Convention (June 21-24). If you are interested, contact Pam St. John at 281-7155 or email her at pstjohn@akingump.com*

✓ *RSVP to Elizabeth Hetrick (710-3615) for Luncheon on May 17th to hear Judge Andy Mireles, 73rd District Court. Judge Mireles will speak on "What Jurors Really Think".*

HAVING IT ALL

Continued from page 1

the Court of Criminal Appeals granted discretionary review on its own motion.

Reasoning that the *Helms* rule originally was based on federal cases in which a guilty plea alone could support a conviction even in a felony case, the Court concluded that it is inconsistent with Texas law, which requires substantiating evidence. In short, errors made on pretrial motions in Texas potentially infect the very evidence on which the conviction is based, notwithstanding that the defendant pleads guilty.

Perhaps more importantly, the *Young* court noted with approval the judicial efficiency inherent in the TRAP 25.2 alternative. What's good for a bargained plea, the Court seemed to say, is just as good for an "open" plea. The *Helms* rule in its traditional form was abandoned.[8]

At first blush, this may seem to be a simple and logical extension of the policy behind TRAP 25.2. *Young* says, however, that, "whether entered with or without an agreed recommendation of punishment by the State, a valid plea of guilty or nolo contendere "waives" or forfeits the right to appeal a claim of error only when the judgment of guilt was rendered independent of, and is not supported by, the error." Presumably, your client still may not appeal if the State can substantiate her plea by evidence other than that she wanted suppressed, but just how "independent" must the evidence be? And what if the offense is a misdemeanor? No substantiating evidence is required for misdemeanors, so does the *Helms* rule remain in full force in those cases? We get no answer from *Young v. State*.

The diminished *Helms* rule still applies to bar appeals, according to *Young*, where the substance of the appeal was not raised by written pretrial motion and ruled on before trial. And it seems that the other requirements of TRAP 25.2 also will be applied to "open" pleas. Unfortunately, and inexplicably, this new state of affairs may provide a disincentive for negotiating a plea. If no plea is bargained for, the defendant now is not disadvantaged by the *Helms* rule, *and* presumably may appeal errors occurring at or after the plea is entered. The same defendant who negotiates a plea is subject to TRAP 25.2, and may lose her right to appeal subsequent errors unless the judge consents to the appeal.

Young v. State may prove to be just the first step toward total abandonment of the *Helms* rule. If so, Texas eventually will benefit from a uniform and sensible scheme for efficiently dealing with guilty pleas and pretrial error. That day has not yet arrived. Until it does, one set of puzzling and illogical rules has been partially replaced only by a modified, but equally perplexing set.

---

[1]*See* TEX. R. APP. PROC. 25.2(B)(3)(B).

[2]*See* TEX. R. APP. PROC. 25.2(B)(3).

[3]484 S.W.2d 925 (Tex. Crim. App. 1972).

[4]It is important to note that TRAP 25.2(b)(3)(B) applies only to "written" motions "ruled on before trial." Given the strict construction courts have given the rule, oral motions or motions on which the trial judge fails to rule almost certainly will be considered "outside" TRAP 25.2.

[5]*See* TEX. R. APP. PROC. 25.2(b)(3)(B).

[6]*See* TEX. CRIM. PRAC. GUIDE §90.02(2)(b)(ii) (Supp. 2000).

[7]8 S.W.3d 656 (Tex. Crim. App. 2000).

[8]*See* Young v. State, 8 S.W.3d 656 (Tex. Crim. App. 2000).