

Affirmed as Modified and Opinion Filed May 25, 2017



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

**No. 05-16-00235-CR
No. 05-16-00236-CR
No. 05-16-01166-CR**

**STEVE WAYNE FRAZIER, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 195th Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F12-22406-N, F13-70198-N, F12-22405-N**

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Myers, and Justice Brown
Opinion by Chief Justice Wright

Steve Wayne Frazier appeals his convictions, following adjudication of his guilt, for possession of morphine, aggravated assault involving family violence, and possession of oxycodone. In three issues, appellant contends the judgments adjudicating guilt should be modified to accurately reflect the conditions of community supervision the State proved that appellant violated. We modify the trial court's judgments adjudicating guilt and affirm as modified.

Appellant waived a jury and pleaded nolo contendere to possession of morphine in an amount less than one gram and possession of oxycodone in an amount less than one gram. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115(a), (b) (West 2011). Appellant also pleaded guilty to aggravated assault involving family violence, causing serious bodily injury with a

deadly weapon. *See* TEX. PENAL CODE ANN. § 22.02(a) (West 2011); TEX. FAM. CODE ANN. §§ 71.0021, 71.005 (West 2014 & Supp. 2016). Pursuant to plea agreements, the trial court deferred adjudicating guilt and placed appellant on three years' community supervision in the possession cases and four years' community supervision in the aggravated assault case.

The State later moved to adjudicate guilt in each case, alleging appellant violated the conditions of community supervision. In the possession cases, the State alleged appellant violated condition (a) by committing three offenses of accident involving injury and condition (p) by consuming alcohol. In the aggravated assault case, the State alleged appellant violated condition (a) as noted above and condition (q) by failing to participate in the Domestic Violence Treatment Program (BIPP). In a hearing on the motions, appellant pleaded not true to the allegations. During the hearing, probation officer Phillip Adkins testified appellant had no "certificate of completion" showing he attended the BIPP class, and appellant was "kicked out of that class" for failing to submit a urinalysis test. Adkins testified he had no personal knowledge as to whether appellant had consumed alcohol or not. During closing argument, appellant's counsel acknowledged appellant received three misdemeanor convictions while on community supervision, but argued appellant was attending his BIPP class and had not consumed alcohol. The trial court granted the State's motions, adjudicated appellant guilty in each case, and assessed punishment at 180 days' confinement in state jail for each possession conviction and ten years' imprisonment for the aggravated assault conviction.

Appellant contends the trial court's judgments adjudicating guilt should be modified to show the conditions of community supervision he was found to have violated. Specifically, appellant asserts there was no evidence he consumed alcohol and that because the judgments state the trial court found he violated the "terms and conditions of community supervision as set out in the State's original motion to adjudicate" and the allegation of alcohol consumption was

included in that motion, the judgments should be modified. The State responded that appellant's requests for judgment modifications are improper because the findings at issue were the result of judicial reasoning.

The trial court heard Adkins' testimony that appellant violated his community supervision by committing three new offenses and by being "kicked out" of the BIPP program. Although Adkins testified he did not know whether or not appellant had consumed alcohol, the trial court could reasonably infer that appellant's failure to submit to a urinalysis test was because he would fail the test due to his consuming alcohol. After reviewing the record, we conclude the judgments accurately reflect the trial court's finding that appellant violated the conditions of community supervision as set out in the State's motions to adjudicate. We overrule appellant's three issues.

In a cross-point, the State contends the judgments adjudicating guilt should be modified to show appellant pleaded not true to the allegations in the motions to adjudicate. We agree with the State. The judgments adjudicating guilt incorrectly reflect that appellant pleaded true to the allegations in the State's motions to adjudicate. The record shows appellant entered a plea of not true to the motions to adjudicate. Accordingly, we modify the judgments adjudicating guilt to show the plea to the motions to adjudicate is "not true." *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Estrada v. State*, 334 S.W.3d 57, 63–64 (Tex. App.—Dallas 2009, no pet.).

As modified, we affirm the trial court's judgments adjudicating guilt.

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

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Tex. R. App. P. 47
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

STEVE WAYNE FRAZIER, Appellant

No. 05-16-00235-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 195th Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F12-22406-N.

Opinion delivered by Chief Justice Wright.

Justices Myers and Brown participating.

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

The section entitled "Plea to Motion to Adjudicate" is modified to show "Not True."

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

Judgment entered May 25, 2017.



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

JUDGMENT

STEVE WAYNE FRAZIER, Appellant

No. 05-16-00236-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 195th Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F13-70198-N.

Opinion delivered by Chief Justice Wright.
Justices Myers and Brown participating.

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

The section entitled "Plea to Motion to Adjudicate" is modified to show "Not True."

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

Judgment entered May 25, 2017.



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

JUDGMENT

STEVE WAYNE FRAZIER, Appellant

No. 05-16-01166-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 195th Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F12-22405-N.

Opinion delivered by Chief Justice Wright.

Justices Myers and Brown participating.

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

The section entitled "Plea to Motion to Adjudicate" is modified to show "Not True."

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

Judgment entered May 25, 2017.