

Affirmed and Memorandum Opinion filed February 18, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00124-CR

ALEXANDER OVEAL, Appellant

V.

STATE OF TEXAS, Appellee

**On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 0782415**

MEMORANDUM OPINION

Appellant Alexander Oveal challenges the sufficiency of the evidence to support the trial court's conclusion that he violated a condition of his community supervision. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1998, appellant was indicted for aggravated sexual assault of a child under the age of fourteen. Adjudication of the offense was deferred and appellant was placed on community supervision for seven years. Due to his continued failure to successfully

complete a sexual-offender treatment program, his community supervision was repeatedly extended and its terms amended. After a polygraph test indicated that appellant gave deceptive answers when questioned about his contact with children, his sexual-offender treatment provider decided to terminate appellant from the program if appellant failed his next polygraph test. In June 2008, appellant submitted to another polygraph examination, and his results indicated that he continued to give deceptive answers. He did not attend scheduled group therapy sessions on July 1 and July 8, 2008, and was unsuccessfully discharged from the program on July 8, 2008. Shortly thereafter, the State moved to adjudicate guilt, and after a hearing, the trial court granted the motion, found appellant guilty of the charged offense, and assessed punishment at twenty years' confinement in the Texas Department of Criminal Justice, Institutional Division. Appellant timely appealed, and argues that the evidence was insufficient to support the trial court's conclusion that appellant violated a condition of his community supervision.

II. STANDARD OF REVIEW

If the State alleges that a defendant on deferred adjudication has violated a condition of community supervision, the defendant is entitled to a hearing to allow the trial court to determine whether to proceed with an adjudication of guilt on the original charge. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (Vernon Supp. 2007). This determination is reviewable in the same manner as a community supervision revocation hearing conducted pursuant to Texas Code of Criminal Procedure article 42.12, § 21.

We review an order revoking community supervision under an abuse-of-discretion standard. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). The State has the burden of showing by a preponderance of the evidence that the defendant committed a violation of the conditions of community supervision. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993); *Kulhanek v. State*, 587 S.W.2d 424, 426 (Tex. Crim. App. 1979). If the State fails to meet its burden of proof, the trial court abuses its discretion in

revoking the community supervision. *Cardona v. State*, 665 S.W.2d 492, 493–94 (Tex. Crim. App. 1984) (en banc). The trial court is the sole judge of the credibility of the witnesses and the weight given to their testimony, and the evidence is reviewed in the light most favorable to the trial court's ruling. *See id.* at 493. Proof by a preponderance of the evidence of any one of the alleged violations of the conditions of community supervision is sufficient to support a revocation order. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 21(b); *Rickels*, 202 S.W.3d at 763–64. To succeed on appeal, an appellant must successfully challenge all of the trial court's findings that support the revocation order. *Jones v. State*, 571 S.W.2d 191, 193–94 (Tex. Crim. App. 1978); *Joseph v. State*, 3 S.W.3d 627, 640 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

III. ANALYSIS

As a condition of appellant's community supervision, he was required to participate in a sex-offender treatment program and comply with all program rules, regulations, and guidelines until successfully discharged. The State moved to adjudicate guilt on the grounds that appellant (1) failed to attend a sex-offender treatment program session on July 1, 2008; (2) failed to attend a sex-offender treatment program session on July 8, 2008; and (3) was discharged unsuccessfully from the treatment program on July 8, 2008. The trial court made a general finding that “[w]hile on community supervision, [appellant] violated the terms and conditions of community supervision as set out in the State's original motion” in that he “failed to participate in [a] sex offender treatment program as directed by the court.”

On appeal, appellant argues that there was genuine confusion as to whether he was expected to attend treatment sessions on July 1 and July 8, 2008. Although these arguments address two of the violations alleged in the State's motion to adjudicate guilt, he does not challenge the third alleged violation, i.e., that he was unsuccessfully discharged from the sex-offender treatment program on July 8, 2008.

The evidence that appellant was unsuccessfully discharged is uncontroverted. Although appellant observes that his therapist initially testified that he was unsuccessfully discharged on July 15, 2008 rather than on July 8, 2008, he does not dispute that his therapist refreshed her recollection by reviewing the discharge letter and testified that appellant was unsuccessfully discharged on July 8, 2008. Appellant does not argue that this evidence is insufficient to support the trial court's finding.

A trial court does not abuse its discretion in revoking community supervision if the evidence is sufficient to support even one of violations alleged. *See Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. 1980); *Moore v. State*, 11 S.W.3d 495, 498 (Tex. App.—Houston [14th Dist.] 2000, no pet.). Because it is undisputed that the evidence supports the judgment on this ground, we need not address his arguments as to the other violations asserted by the State.

We overrule appellant's sole issue on appeal and affirm the trial court's judgment.

/s/ Tracy Christopher
Justice

Panel consists of Chief Justice Hedges and Justices Anderson and Christopher.

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