Affirmed and Memorandum Opinion filed December 9, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00802-CR
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MARCUS JAMES PAYNE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause Nos. 1070654, 1127326

MEMORANDUM OPINION

Appellant Marcus James Payne challenges the trial court's adjudication of his guilt in two separate deferred adjudication aggravated-assault cases. In seven issues, he asserts that the trial court (a) failed to limit the grounds for revocation to the violations the State pleaded; (b) did not function as a neutral and detached hearing body during the revocation proceeding; (c) refused to provide a written statement of the evidence relied on in revoking appellant's probation; (d) denied appellant a fair chance to present his appeal; (e) denied appellant "due course of law" during the revocation proceedings;

(f) abused its discretion in evaluating the evidence to support the revocation; and (g) arbitrarily revoked appellant's probation. We affirm.

BACKGROUND

On August 21, 2006, in cause number 1070654, appellant pleaded guilty to aggravated assault with a deadly weapon, alleged to have occurred on or about May 28, 2006. The trial court deferred a finding of guilt, placed appellant on community supervision for five years, and imposed a $750 fine. Less than two years later, on July 11, 2008, appellant pleaded guilty to aggravated assault – serious bodily injury alleged to have occurred on or about July 14, 2007, in cause number 1127326.[1] The trial court again deferred a finding of guilt and placed appellant on community supervision for five years on July 14, 2008.

In September 2008, the State filed motions to adjudicate appellant's guilt in both cases, alleging multiple violations of the terms and conditions of his community supervision. In April 2009, the State filed amended motions, in which it alleged the following violations of appellant's community supervision:

- The July 14, 2007 aggravated assault (Cause No. 1070654 only);
- A third aggravated assault - serious bodily injury that allegedly occurred on August 17, 2008;
- An assault on another inmate in Harris County Jail on January 10, 2009;
- An assault on another inmate in Harris County Jail on December 25, 2008;
- Failure to report to the Community Supervision Office in August, September, and October 2008;
- Failure to perform his community service hours as ordered by the court;
- Failure to attend the anger management program ordered by the court; and
- Failure to pay Crime Stoppers as ordered by the court (Cause No. 1127326 only).

[1] The State filed a motion to adjudicate guilt in the first case based on this new offense, but later dismissed that motion.

The trial court heard the State's motions to adjudicate on June 15, 2009. At the hearing, Patricia Archer, appellant's community supervision officer, testified. She explained that appellant was assigned to her "mental health caseload" in July 2008. According to Archer, appellant had been diagnosed with bipolar disorder and attention deficit hyperactivity disorder, and he was on medication for both disorders. She explained that appellant did not inform her when he was charged with the third aggravated assault, failed to report to her office as required for the months of September and October, did not perform his community service hours as ordered, and did not begin the anger management treatment program as directed. Archer stated that appellant told her he was unable to perform his community service for August 2008 because he reported to the organization he was supposed to serve after the 15th of the month and the organization refused to allow him to perform his hours. She also explained that appellant's file was forwarded to the court in September because the motion to adjudicate had been filed, but testified that appellant could have reported to her nonetheless. Regarding the anger management course, Archer stated that appellant was approved for the free course in July 2008, but was charged with the third aggravated assault before he could enroll. Finally, she testified that appellant had been involved in fights while he was in jail on the third aggravated assault charge.

The complaining witness in the third aggravated assault testified that she and appellant got into an argument while in her car at the drive-through lane of a fast-food restaurant. She explained that after the argument escalated, they both got out of the car. According to the complainant, she pushed appellant because he was yelling in her face. She stated that when she turned to get back into her car, appellant grabbed her head and "slammed" it into the top of her car window. She hit the window with such force that she split her lip badly enough to require seventeen stitches, cracked several of her teeth and knocked one out, and fractured her top jaw bone. On cross-examination, the complainant admitted that she had been drinking earlier that day and evening, but denied that she was intoxicated when the altercation occurred.

The State's final witness, Deputy Kathleen Torres, custodian of records for the Harris County Jail Inmate Disciplinary Files, testified that appellant had been found guilty of "fighting" on December 25, 2008. When asked to clarify the difference between fighting and assault in jail, Torres explained:

> In an assault, it's normally one inmate instigates it, the other inmate doesn't do anything to defend himself. He either tries to back away, get help, get away from that particular inmate or doesn't have a chance to respond to do anything because he gets knocked out or injured too seriously.
>
> As for a fight, in the inmate handbook, it states mutual combat. Any time - - doesn't matter who started the fight. In the inmate handbook if you choose to defend yourself, hit back, strike back, it is considered a fight in Harris County.

Torres also testified that appellant had been found not guilty of the January 2009 assault on an inmate because the report was filed too late to be investigated. After Torres testified, the State rested.

Appellant presented the testimony of several witnesses regarding the third aggravated assault. These witnesses, who were either in the car when the assault occurred or present earlier in the evening, testified that the complainant had been drinking and was intoxicated when the altercation occurred and that she later described the incident as an "accident" or "horseplay." Two witnesses were actually in the car when the assault occurred. One of these witnesses testified that the complainant got angry with appellant because he "messed with" the radio in the complainant's car; she ordered him to get out of her car. This witness said the complainant got out of the car and was screaming at appellant; she stated that appellant got out of the car, and the two started pushing each other. This witness testified that appellant started "getting mad" and "he pushed her for the last time, she hit her face on her door[.]" The other witness inside

the car related a somewhat similar story,[2] but stated that she did not actually see what occurred once appellant and the complainant got out of the car.

Additionally, an officer from a community-service organization, Creative Ministries International, Inc. d/b/a Angelic Resale, testified that appellant was assigned to and performed community-service hours for his organization. He stated, however, that appellant did not perform any community service in June, July, and September 2008. Finally, appellant's mother testified that she had attempted to reach appellant's community supervision officer by phone several times after August 2008, but was unable to do so. She explained that appellant's probation appointment was September 15, 2008, but Hurricane Ike hit so he was unable to go to that appointment. She stated that she continually called his community supervision officer throughout the month and finally spoke to her supervisor around the end of September. She testified that she then discovered that appellant's file had been sent to the District Attorney's office earlier in September, which was why her calls had not been returned. Finally, she explained that when she informed appellant that a warrant had been issued for his arrest in November, he turned himself in.

After hearing the evidence and argument of counsel, the trial court concluded that appellant had violated the terms of his community supervision and adjudicated him guilty of both offenses. Specifically, the trial court found that appellant had "commit[ed] an offense against the State of Texas." The trial court sentenced appellant to eight years' confinement for each offense, with the sentences to run concurrently. This appeal followed.

ANALYSIS

As described above, appellant presents seven issues for our review. However, in his "Argument and Authorities" section of his brief, he states, "The AUTHORITIES

[2] This witness, however, stated that the complainant, while inside the car, turned around and hit appellant "a bunch of times in his chest and upper body."

presented here are limited. The ARGUMENT presented is limited. The STATEMENT OF FACTS provides sufficient information to support this Court['s] intervention into this case."[3] He next quotes portions from two cases without providing any analysis or application of these authorities to the facts of this case. *No where else in his brief does he cite any legal authority.* Finally, he identifies only three issues in the Argument section of his brief, with no citations to legal authority or to the record; instead, he cites to his Statement of Facts, which contains some record cites. His issues in the Argument section are: (1) the trial court failed to function as a neutral and detached body; (2) the trial court refused to provide a written statement regarding the evidence it relied on and the reasons for revoking appellant's probation; and (3) the trial court abused its discretion in evaluating the evidence. Although appellant's case could be resolved on the basis of briefing waiver,[4] in the interest of justice, we will evaluate these three issues. However, we conclude that appellant has waived the remainder of his issues for inadequate briefing. *See* Tex. R. App. P. 38.1(g), (h), (i); *see also Busby v. State*, 253 S.W.3d 661, 673 (Tex. Crim. App. 2008) (explaining that appellate court "has no obligation to construct and compose appellant's issues, facts, and arguments").

A. The trial court functioned as a neutral and detached body.

Appellant asserts that the trial court did not function as a neutral and detached body. We presume that the trial court was neutral and detached unless there is a clear showing to the contrary. *Roman v. State*, 145 S.W.3d 316, 319 (Tex. App.—Houston [14th Dist.] pet. ref'd) (citing *McClenan v. State*, 661 S.W.2d 108, 110 (Tex. Crim. App. 1983) (en banc), *overruled in part on other grounds by DeLeon v. Aguilar*, 127 S.W.3d 1, 5 (Tex. Crim. App. 2004)).

[3] *But see* Tex. R. App. P. 38.1(g) (providing that the brief must state concisely and *without argument* the facts pertinent to the issues or points presented).

[4] *See* Tex. R. App. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, *with appropriate citations to authorities and to the record.*" (emphasis added)).

The trial court sentenced appellant on June 15, 2009, without objection. Nearly one month later, on July 14, 2009, appellant filed a "Motion for New Trial; Motion in Arrest of Judgment and for Recusal of Judge" in both cases. In this motion, appellant stated that the trial court's "conduct and demeanor demonstrate bias and prejudice toward" appellant. The trial court signed an order declining to recuse on July 22, 2009, and referred the matter to the administrative region for further action. Two days later, appellant filed a motion to withdraw his recusal motion, in which he stated, "Defendant accepts the Court's affirmation that the Judge can proceed through this case without bias or prejudice toward Defendant." The presiding judge of the administrative region granted appellant's motion to withdraw the recusal motion. Moreover, while on community supervision for an aggravated assault, appellant pleaded guilty to another aggravated assault. The same trial court again placed appellant on deferred adjudication-community supervision. Then, while on community supervision for two aggravated assaults, appellant was arrested for another aggravated assault. During his jail residency awaiting resolution of this third alleged offense, appellant engaged in fighting with other inmates. After adjudicating appellant guilty for the first two aggravated assaults to which he had pleaded guilty, the trial court sentenced him to only eight years' confinement for each offense,[5] with the sentences to run concurrently. We see nothing in the record supporting appellant's contention that the trial court was either biased or prejudiced against him. Accordingly, we determine this issue is without merit and overrule it.

B. The trial was not required to issue findings because the judgments reflect the grounds for revocation.

Appellant contends the trial court erred in failing to file findings of facts and conclusions of law in this case. When the trial court revokes a defendant's probation, due process requires specific written findings of fact where a defendant requests findings of

[5] The range of punishment for aggravated assault is two to twenty years. *See* Tex. Penal Code Ann. §§ 12.33(a) (second degree felony subject to two to twenty year sentence), 22.02(b) (aggravated assault is second degree felony).

fact be made. *See Whisenant v. State*, 557 S.W.2d 102, 105 (Tex. Crim. App. 1977); *Joseph v. State*, 3 S.W.3d 627, 639 (Tex. App.—Houston [14th Dist.] 1999, no pet.). However, the trial court is not required to issue separate findings if the judgment or revocation order discloses the grounds for revocation found by the court. *See Joseph*, 3 S.W.3d at 640; *see also Reasor v. State*, 281 S.W.3d 129, 136 (Tex. App.—San Antonio 2008, pet. ref'd).

Here, the trial court indicated on the judgment that it was revoking appellant's community supervision because appellant had committed an offense against the State of Texas. Thus, in its judgment, the trial court disclosed the grounds for revocation and was not required to issue separate findings. *Reasor*, 281 S.W.3d at 136; *Joseph*, 3 S.W.3d at 640. We conclude that this issue lacks merit and overrule it.

C. The trial court did not abuse its discretion in evaluating the evidence from the revocation hearing.

We review a trial court's order revoking community supervision for an abuse of discretion. *See Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *Moore v. State*, 11 S.W.3d 495, 498 (Tex. App.—Houston [14th Dist.] 2000, no pet.). The State's burden of proof in a revocation proceeding is by a preponderance of the evidence. *Cobb v. State*, 851 S.W.2d 871, 874 (Tex. Crim. App. 1993) (en banc); *Moore*, 11 S.W.3d at 498. In conducting our review, we consider all the evidence in the light most favorable to the trial court's finding to determine whether the trial court could have reasonably found that appellant violated the terms and conditions of his probation by a preponderance of the evidence. *See Rickels*, 202 S.W.3d at 763–64. The State satisfies its burden of proof when the greater weight of credible evidence before the court creates a reasonable belief that it is more probable than not that the defendant has violated a condition of community supervision. *Joseph v. State*, 3 S.W.3d 627, 640 (Tex. App.—Houston [14th Dist.] 1999, no pet.). Proof of any one of the alleged violations is sufficient to support a revocation of probation. *Moore*, 11 S.W.3d at 498. Finally, in a revocation hearing, it is the trial court's role to make credibility determinations and resolve evidentiary conflicts. *See*

Garrett v. State, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.]1981); *Moore*, 11 S.W.3d at 498.

Here, the complainant described a serious assault by appellant. She testified that he grabbed her by the head and "slammed" her head into the top of her car door, causing her to split her lip, lose a tooth and crack several others, and fracture her jaw. The only witnesses in the car at the time of the altercation provided conflicting details about it: one stated that the complainant started hitting appellant while inside the car and the other stated the physical confrontation did not start until both the complainant and appellant were out of the car. Finally, the only witness who stated that she saw the altercation testified about appellant's pushing the complainant, resulting in the complainant's hitting her face on the car door and being seriously injured.

We leave to the trial court the determination of the witnesses' credibility and the resolution of any conflicts in their testimony. *See Moore*, 11 S.W.3d at 498. Here, the trial court could have found the complainant's testimony more credible than that of appellant's witnesses. Considering the evidence in the light most favorable to the trial court's ruling, we conclude that the trial court could have reasonably found that appellant violated the terms and conditions of his probation by committing the third aggravated assault. We thus overrule this issue.

For the foregoing reasons, we affirm the trial court's judgment.

/s/ Adele Hedges
Chief Justice

Panel consists of Chief Justice Hedges, Justice Jamison, and Senior Justice Hudson.[*]
Do Not Publish — TEX. R. APP. P. 47.2(b).

[*] Senior Justice J. Harvey Hudson sitting by assignment.