Affirmed and Memorandum Opinion filed March 23, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00425-CR

CONNOR HENRY ALBERS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Cause No. 69667

M E M O R A N D U M O P I N I O N

In this appeal, appellant Connor Henry Albers challenges the sufficiency of the evidence supporting the trial court's revocation of his community supervision. Because appellant pleaded true to a number of the asserted violations of the terms and conditions of his community supervision, the evidence is sufficient to support the revocation.

Appellant also contends that the trial court erred by sentencing him to eight years' confinement, an allegedly excessive and disproportionate sentence. Because the trial court's sentence was within the statutory range of punishment for appellant's felony offense and appellant did not raise any challenge to the sentence with the trial court, we find no error in the trial court's sentence.

Finding no error in the revocation or the sentence, we affirm the trial court's judgment.

BACKGROUND

Appellant pleaded guilty in 2013 to the third-degree felony offense of evading arrest. *See* Tex. Penal Code Ann. § 38.04(a), (b)(2)(A) (Vernon 2016). The trial court deferred adjudication of appellant's guilt and placed appellant on community supervision for two years.

The State subsequently moved to revoke appellant's community supervision and for an adjudication of guilt in 2014, alleging that appellant violated numerous conditions of his community supervision. The motion was dismissed when the parties and the trial court agreed to extend appellant's community supervision for an additional year — until July 2016 — and to amend appellant's community supervision to require that appellant attend and complete an intensive outpatient substance abuse program.

The State again moved to revoke appellant's community supervision in January 2016, alleging 17 violations of appellant's community supervision terms and conditions. The asserted violations included that appellant used alcohol and marijuana; failed to report to his supervision officer for several months; failed to pay supervision fees; failed to attend and complete alcohol education classes or the intensive outpatient substance abuse program; failed to complete required

community service hours; failed to provide requested breath and urine samples on numerous occasions; and failed to appear for a review hearing.

Appellant pleaded true to six of the 17 alleged violations. After a hearing, the trial court found 15 of the 17 violations to be true, adjudicated appellant guilty, and sentenced appellant to eight years' confinement.

ANALYSIS

I. Sufficiency of the Evidence

An order revoking probation must be supported by a preponderance of the evidence, meaning that the greater weight of the credible evidence would create a reasonable belief that the defendant has violated a condition of his community supervision. *Rickels v. State*, 202 S.W.3d 759, 763-64 (Tex. Crim. App. 2006). We review an order revoking community supervision under an abuse of discretion standard. *Id.* In conducting this review, we view the evidence in the light most favorable to the trial court's order. *Greer v. State*, 999 S.W.2d 484, 486 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). The trial court is the sole trier of fact and determines the credibility of the witnesses and the weight to be given their testimony. *Moore v. State*, 11 S.W.3d 495, 498 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

Proof of any one of the alleged violations of the community supervision terms is sufficient to support a revocation of community supervision. *Leonard v. State*, 385 S.W.3d 570, 576 (Tex. Crim. App. 2012); *Moore*, 11 S.W.3d at 498; *see also Smith v. State*, 286 S.W.3d 333, 342 (Tex. Crim. App. 2009) (trial court was justified in revoking community supervision where appellant's proffered evidence only challenged one of several grounds for revocation).

Moreover, a plea of true to any one alleged violation, standing alone, is sufficient to support the revocation order. *See Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. [Panel Op.] 1979); *Cole v. State*, 578 S.W.2d 127, 128 (Tex. Crim. App. [Panel Op.] 1979); *Moore*, 11 S.W.3d at 498 n.1. Once a plea of true has been entered, a defendant may not challenge the sufficiency of the evidence to support the subsequent revocation. *See Rincon v. State*, 615 S.W.2d 746, 747 (Tex. Crim. App. [Panel Op.] 1981); *Cole*, 578 S.W.2d at 128; *Moore*, 11 S.W.3d at 498 n.1.

Here, appellant pleaded true to six of the 17 alleged violations. That alone is sufficient to support the trial court's revocation order. *See Moses*, 590 S.W.2d at 470; *Cole*, 578 S.W.2d at 128; *Moore*, 11 S.W.3d at 498 n.1. But there is additional evidence of appellant's violations. The trial court received into evidence two statements signed by appellant in which he admits to alcohol use in violation of his supervision terms. The trial court also received into evidence drug testing reports indicating that appellant had used alcohol and marijuana, and showing that appellant failed to report for drug testing on eight occasions. The trial court heard testimony from appellant's probation officer that appellant failed to report to his supervisor for several months; failed to pay required fees; failed to complete alcohol education classes; failed to report for drug testing on multiple occasions; failed to complete the required community service hours; was discharged from his intensive outpatient substance abuse program; and admitted to her that he had used marijuana. Finally, appellant testified and admitted to a number of violations of his community supervision terms. Viewing all of this evidence in the light most favorable to the trial court's revocation order, we conclude that there is sufficient evidence to support the trial court's order.

Appellant's first issue is overruled.

II. Excessiveness or Proportionality of Sentence

Appellant next contends that the trial court's sentence of eight years' confinement was excessive and disproportionate to the crime committed. Appellant contends that the excessive and disproportionate sentence violates his constitutional rights under the Eighth Amendment to the United States Constitution and Article 1, Section 13 of the Texas Constitution.

Upon adjudicating appellant guilty of the third-degree felony of evading arrest, the trial court had discretion to impose a sentence between two and 10 years' imprisonment. *See* Tex. Penal Code Ann. § 12.34(a) (Vernon 2011). The trial court sentenced appellant to eight years — within the statutory range of punishment and not at either extreme. *See, e.g.*, *Booker v. State*, 523 S.W.2d 413, 414-15 (Tex. Crim. App. 1975) (punishment of eight years not excessive where statutory punishment range was two to 10 years); *see also Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984) ("It is also the general rule that as long as a sentence is within the proper range of punishment it will not be disturbed on appeal.").

Appellant did not object to his sentence on any grounds, constitutional or otherwise, at the time of sentencing or in any post-trial motion. Appellant lodged no objection with the trial court that the sentence was excessive or disproportionate. Even constitutional claims can be waived for failure to object. *See Rhoades v. State*, 934 S.W.2d 113, 120 (Tex. Crim. App. 1996) (Article 1, Section 13 challenge forfeited by failure to object); *Curry v. State*, 910 S.W.2d 490, 497 (Tex. Crim. App. 1995) (Eighth Amendment claim not preserved where no objection was made at trial); *Nicholas v. State*, 56 S.W.3d 760, 768 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd) (appellant's claims that sentences were cruel and unusual under both Federal and State constitutions were not

preserved where no objection made at time sentences were announced or in any post-trial motion). We conclude that by failing to raise the issue with the trial court, appellant failed to preserve any challenge to the excessiveness or proportionality of his sentence under either the United States or Texas Constitutions. *See* Tex. R. App. P. 33.1(a) (a specific and timely request, objection, or motion must be made to the trial court in order to preserve the issue for appellate review).

Appellant's second issue is overruled.

CONCLUSION

Having overruled appellant's issues, we affirm the trial court's judgment.

/s/ William J. Boyce
Justice

Panel consists of Justices Boyce, Busby, and Wise.
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