

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00182-CR
NO. 09-10-00183-CR

JOSHUA GUILLORY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 09-07692 and 09-07767

MEMORANDUM OPINION

Joshua Guillory entered agreed pleas to two counts of aggravated robbery. The trial court deferred adjudication of guilt and placed him on community supervision for ten years in each case.¹ Subsequently, the State filed motions to revoke Guillory's unadjudicated community supervision. The trial court held an evidentiary hearing on the

¹In appellate cause number 09-10-00182-CR, the trial cause number is No. 09-07692. In appellate cause number 09-10-00183-CR, the trial cause number is No. 09-07767.

motions to revoke, found that Guillory violated the community supervision orders, and sentenced him to confinement for life in prison in each case.

In a single issue in each appeal, Guillory contends he has been denied a complete appellate record, even though he complied with all requirements for securing a complete record. In the trial court, counsel timely filed a written designation of the record. Attached to the designation of the record is a copy of counsel's written request to the official reporter for the preparation and filing of the complete reporter's record in each case. The reporter's record on appeal contains only the record from the hearing on the Motion to Revoke Unadjudicated Probation. The record of the plea hearing and of the hearing at which the trial court placed Guillory on deferred adjudication has not be filed in either case. Guillory asserts that without the record from these hearings he is unable to determine whether the trial court pre-determined the sentence at the time of entry of the original plea or made other comments that "would render the ultimate sentence insupportable." Nothing in the sentencing record suggests that the sentence had been pre-determined.

"[A] defendant placed on deferred adjudication community supervision may raise issues relating to the original plea proceeding, such as evidentiary sufficiency, only in appeals taken when deferred adjudication community supervision is first imposed." *Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999). By Texas statute, an appellate court's review of an order adjudicating guilty ordinarily is limited to whether

the trial court abused its discretion in determining that the defendant violated the terms of his community supervision. *See* Tex. Code Crim. Proc. Ann. art. 42.12, § 5(b) (West Supp. 2010); *see also Rickles v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *Antwine v. State*, 268 S.W.3d 634, 636 (Tex. App.--Eastland 2008, pet. ref'd). Except in limited circumstances, the original plea cannot be attacked on an appeal of the revocation proceedings. *See Nix v. State*, 65 S.W.3d 664, 667-68 (Tex. Crim. App. 2001) (applying limitations on appeal to cases of deferred adjudication); *see also Daniels v. State*, 30 S.W.3d 407, 408 (Tex. Crim. App. 2000) (“Pursuant to *Manuel*, the reporter’s record from the original deferred adjudication proceeding is not necessary to this appeal’s resolution since appellant cannot now appeal any issues relating to the original deferred adjudication proceeding.”). At the motion to revoke hearing and the sentencing hearing, Guillory made no objection to the process and made no complaint like the one he now raises. *See* Tex. R. App. P. 33.1 (preservation of error). Essentially, it appears appellant requests the record from prior hearings solely to support an issue not preserved at sentencing. *See id.* We therefore overrule appellant’s only issue and affirm the trial court’s judgments in cause numbers 09-07692 and 09-07767.

We affirm the judgment.

AFFIRMED.

DAVID GAULTNEY
Justice

Submitted on November 9, 2010
Opinion Delivered November 24, 2010
Do Not Publish

Before McKeithen, C.J., Gaultney and Horton, JJ.