

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00249-CR

DAVID ALLEN GARRETT, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 09-07081

MEMORANDUM OPINION

David Allen Garrett, Jr. appeals from the revocation of his probation. We conclude the trial court did not abuse its discretion.

Garrett pled guilty to aggravated assault. The trial court deferred adjudication of guilt and placed him on community supervision for five years. One of the conditions of community supervision was to have no contact with the victim of the offense. At the revocation hearing, the trial court found Garrett violated the no-contact condition, adjudicated Garrett guilty of the aggravated assault offense, and sentenced him to twenty years in prison.

In a single issue, Garrett argues the trial court abused its discretion in revoking his community supervision. We review a revocation order under an abuse of discretion standard. *See Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). The State has the burden to show by a preponderance of the evidence that the defendant violated a community supervision term. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993); *Antwine v. State*, 268 S.W.3d 634, 636 (Tex. App.—Eastland 2008, pet. ref’d). Proof of one violation is sufficient to support revocation. *See Moore v. State*, 605 S.W.2d 924, 926 (Tex Crim. App. 1980); *Reasor v. State*, 281 S.W.3d 129, 134 (Tex. App.—San Antonio 2008, pet. ref’d).

An order dated October 19, 2009, amending the terms of the community supervision, stated that Garrett was to have “[n]o contact with the victim of the offense[.]” The order stated there would be “zero tolerance[.]” The State subsequently filed a motion to revoke. The revocation motion alleged that Garrett “had contact with the victim(s) of the offense either in person, by telephone, via mail or through a third party on or about the 24th day of April, 2010 and or about the 28th day of April, 2010, in violation of Special Amendment dated October 19, 2010.” Garrett pled not true to the alleged violation.

Garrett maintains that during the revocation hearing no evidence was presented on the special amendment dated October 19, 2010. He asserts that although the trial judge

read the violation itself, he did not state the October 19, 2010 date which was alleged in the revocation motion.

The October 19, 2010 date is incorrect and is scratched through on the motion. The date on the order amending the community supervision is October 19, 2009. Garrett had notice of the amendment, because he signed the amended order, dated October 19, 2009. During the revocation hearing, the trial court stated to Garrett as follows:

[Court]: This [first amended] motion [to revoke] states that on the 19th day of October, 2009, you were placed on probation for the offense of aggravated assault. I found the evidence to be sufficient to find you guilty; deferred the finding, placed you on probation for five years.

Count 2 alleges you had contact with the victim either in person or by telephone or through the mail or a third party on or about the 24th day of April of 2010, and on or about the 28th day of April of 2010. Is -- well, and -- no. I'm sorry. That's it. Is Count 2 true or not true?

[Defendant]: Not true, sir.

The trial judge's statement of the alleged violation is clear; it explains the violation and the dates of contact. Garrett pled "[n]ot true[.]" There was no objection to the trial court's statement of the allegation and no claim that Garrett did not understand the alleged violation.

The evidence is conflicting in this case. The victim testified Garrett had contact with her on April 24 and April 28, as well as on other occasions. Garrett testified he did not contact her, and that she initiated all the contact between them, though he admitted he chose to see her when she came to visit him in the jail. The victim testified he wrote to

her. Garrett's grandmother testified and called into question the victim's character and credibility.

The trial court was the judge of the witnesses' credibility and the weight to be given their testimony. *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. 1981). We review the evidence in the light most favorable to the trial court's ruling. *Antwine*, 268 S.W.3d at 636. The State met its burden of showing by a preponderance of the evidence that Garrett violated the community supervision order. The trial court did not abuse its discretion in revoking the unadjudicated supervision and adjudicating Garrett guilty of aggravated assault. We need not address the other alleged violation, since proof of one is sufficient to support revocation. We overrule Garrett's issue and affirm the judgment.

AFFIRMED.

DAVID GAULTNEY
Justice

Submitted on January 7, 2011
Opinion Delivered January 19, 2011
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.