In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00137-CR

ALEX BARCLAY YOUNG, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 10-09894

MEMORANDUM OPINION

Appellant Alex Barclay Young appeals from the trial court's revocation of his community supervision and adjudication of guilt for the offense of possession of child pornography. In three issues, Young argues that (1) the trial court violated the prohibition against double jeopardy, (2) collateral estoppel bars the State from "prosecuting appellant in two counts for the same conduct[,]" and (3) he was denied a complete record on appeal. We affirm the trial court's judgment.

Pursuant to a plea bargain agreement, Young pleaded guilty to possession of child pornography. The trial court found the evidence sufficient to find Young guilty, but

deferred further proceedings, placed Young on community supervision for seven years, and assessed a fine of $750. The State subsequently filed a motion to revoke Young's unadjudicated community supervision.

Young pleaded "true" to two violations of the conditions of his community supervision. The first alleged violation states that, by committing the offense of public intoxication on December 7, 2010, Young violated condition one of the terms of his community supervision order, which provided that Young would commit no offense against the laws of Texas or any other state. The second alleged violation states that, by committing the offense of public intoxication on December 7, 2010, Young violated condition eleven of the terms of his community supervision order, which provided that Young would not become intoxicated or be under the influence of any intoxicating substance. The trial court found that Young violated the conditions of his community supervision, found Young guilty of possession of child pornography, and assessed punishment at ten years of confinement.

Young argues in his first issue that the trial court's use of the same public intoxication offense twice violated the prohibition against double jeopardy. In issue two, Young asserts that collateral estoppel bars the State from "prosecuting" him in two counts for the same conduct. We address issues one and two together.

In a community supervision revocation proceeding, the State bears the burden to show that the defendant violated a condition of probation as alleged in the motion to

revoke. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993). Proof of one violation is sufficient to support revocation. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980); *see also Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. 1979). We review a trial court's decision to adjudicate someone placed on deferred adjudication community supervision in the same manner we employ in a revocation proceeding in which a finding of guilt has not been deferred. Tex. Code Crim. Proc. Ann. art. 42.12, § 5(b) (West Supp. 2010).

Double jeopardy prohibits twice placing a person in "legal jeopardy" when he is put to trial before a court of competent jurisdiction. *State v. Nash*, 817 S.W.2d 837, 840 (Tex. App.—Amarillo 1991, writ ref'd); *see also* U.S. Const. amend. V; Tex. Const. art. I, § 14. Community supervision revocation is not a stage of a criminal prosecution. *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973); *see generally Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (Revocation of parole is not part of a criminal prosecution.). A community supervision revocation proceeding is an administrative hearing, not a criminal trial. *Cobb*, 851 S.W.2d at 873; *see also Bradley v. State*, 564 S.W.2d 727, 729 (Tex. Crim. App. 1978) ("The relationship between the probationer and the court is contractual in nature."). Therefore, traditional notions of double jeopardy are not controlling in revocation proceedings. *Ex parte Byrd*, 752 S.W.2d 559, 564 (Tex. Crim. App. 1988).

The trial court's decision to revoke Young's community supervision did not twice place Young in legal jeopardy for the offense of public intoxication. *See generally Nash*, 817 S.W.2d at 840. Rather, the trial court considered Young's admitted violation of the terms of his community supervision by committing the offense of public intoxication to revoke Young's community supervision for the offense of possession of child pornography. Young was not twice put to trial for public intoxication. Accordingly, the trial court's use of Young's offense of public intoxication (which happened to violate two conditions of Young's community supervision) to revoke Young's community supervision did not violate double jeopardy. *See id*.; *see also generally Moses*, 590 S.W.2d at 470.

Collateral estoppel means that when an issue of ultimate fact has been determined by a valid final judgment, the same issue cannot again be litigated between the same parties in any future lawsuit. *State v. Stevens*, 235 S.W.3d 736, 740 (Tex. Crim. App. 2007). Collateral estoppel deals with specific factual determinations, not legal claims or legal conclusions. *Guajardo v. State*, 109 S.W.3d 456, 460 (Tex. Crim. App. 2003). Collateral estoppel does not apply in this case because no particular fact concerning Young's violation of the terms of his community supervision by committing the offense of public intoxication was finally determined in a prior proceeding. *See Stevens*, 235 S.W.3d at 740; *Ex parte Tarver*, 725 S.W.2d 195, 198, 200 (Tex. Crim. App. 1986). For all of these reasons, we overrule issues one and two.

In his third issue, Young argues that he has been denied a complete record on appeal because the record "does not contain the reporter's record from the original plea hearing or sentencing[.]" On April 27, 2011, which is the same date on which Young filed his appellate brief, Young filed with this Court a motion for supplementation of the appellate record, and we granted Young's motion on May 5, 2011. Had Young's review of the supplemental appellate record, which contains the original plea hearing and sentencing, revealed additional issues that Young desired to brief, Young could have filed an amended or supplemental brief addressing those issues. However, Young did not do so. We conclude that Young was not deprived of a full appellate record. Accordingly, we overrule issue three and affirm the trial court's judgment.

AFFIRMED.

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STEVE McKEITHEN
Chief Justice

Submitted on July 15, 2011
Opinion Delivered August 10, 2011
Do Not Publish

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