

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00159-CR

JARAME NASH, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 92320**

MEMORANDUM OPINION

Appellant Jarame Nash appeals from the trial court's judgment adjudicating him guilty of the unauthorized use of a vehicle. Specifically, Nash argues there is no evidence to establish that he is the same person who was previously placed on community supervision in this cause. We affirm the trial court's judgment.

In September 2004, Nash pled guilty to the unauthorized use of a vehicle. Pursuant to a plea-bargain agreement, the trial court deferred adjudicating Nash's guilt, and placed

him on three years deferred adjudication community supervision. The trial court amended the terms of Nash's community supervision in 2006, 2009, and 2010, thereby extending the terms of his probation by four years. The State filed a motion to revoke unadjudicated probation, alleging that Nash had violated the terms and conditions of his community supervision. Specifically, the revocation motion alleged that Nash had "committed the offense of FAILURE TO IDENTIFY-FICTITIOUS NAME[.]" The motion also alleged that Nash had failed to pay his court-assessed fees. At a hearing on the State's motion, Nash pled not true to the allegation that he failed to identify himself.

We review an order revoking community supervision under an abuse of discretion standard. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). "A trial court abuses its discretion if the decision is so clearly wrong as to lie outside the zone within which reasonable persons might disagree." *Mauney v. State*, 107 S.W.3d 693, 695 (Tex. App.—Austin 2003, no pet.) (citing *Cantu v. State*, 842 S.W.2d 667, 682 (Tex. Crim. App. 1992)). The trial judge is the sole judge of the credibility of the witnesses and the weight to be given the witnesses' testimony. *Allbright v. State*, 13 S.W.3d 817, 819 (Tex. App.—Fort Worth, 2000, pet. ref'd). We review the evidence in the light most favorable to the trial court's ruling. *Jones v. State*, 589 S.W.2d 419, 421 (Tex. Crim. App. 1979).

In a revocation proceeding, the State must prove by a preponderance of the evidence that the defendant violated a condition of his community supervision. *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). The State must also prove the identity of the probationer by a preponderance of the evidence. *Cobb*, 851 S.W.2d at 874. However, an appellant who fails to make his identity an issue at the revocation hearing is precluded from raising the issue for the first time on appeal. *Riera v. State*, 662 S.W.2d 606, 607 (Tex. Crim. App. 1984). When the State fails to meet its burden of proof, the trial court abuses its discretion by revoking the community supervision. *Cardona v. State*, 665 S.W.2d 492, 493-94 (Tex. Crim. App. 1984).

The record demonstrates that Nash did not make his identity an issue at the revocation hearing. Accordingly, Nash is precluded from raising the issue of identity for the first time on appeal. *See Riera*, 662 S.W.2d at 607. However, even if Nash had raised the issue of his identity at the revocation hearing, Nash identified himself on the record by acknowledging his true name during the revocation hearing:

THE COURT:	Are you Jarame Nash?
THE DEFENDANT:	Yes, sir.

Further, Nash asked the trial court to reinstate him on probation, and asked for the court to lower his court fees. In support of his request to be reinstated, Nash argued to the trial court that he had never missed a report date, had no new cases, and completed most of his community service hours. In viewing the evidence in the light most favorable to the trial court's ruling, we conclude that the State met its burden of showing that Nash was the individual originally placed on community supervision. The trial court did not abuse its

discretion in revoking Nash's community supervision. We overrule Nash's sole issue and affirm the trial court's judgment.

AFFIRMED.

CHARLES KREGER

Justice

Submitted on July 8, 2011
Opinion Delivered July 27, 2011
Do not publish

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