

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00289-CR

JERMAINE LEON TURNER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 07-02302

MEMORANDUM OPINION

Jermaine Leon Turner was convicted of possession of a controlled substance. The trial court placed him on community supervision for three years. Turner violated two of the court's conditions. The trial court revoked the community supervision and assessed a sentence of two years in a state jail facility.

Turner argues the trial court erred in conducting a hearing on the State's motion to revoke, because the trial court had already dismissed the case and no longer had jurisdiction to consider the motion. He says the revocation of his community supervision and the sentence imposed by the trial court are void.

The State had previously moved to revoke. Subsequently, the community supervision officer sent a memo to the trial judge. The officer stated in the memo that the federal indictment on which the motion to revoke was based had been dismissed, and requested that the “pending MTRP be dismissed & the defendant be continued on probation.” Handwritten on the memo is the term “OK[,]” along with initials and the date.

The trial judge signed an order entitled “Order to Dismiss MTRP.” “Other” is checked as the reason for dismissal. The order refers to “[t]he foregoing motion” and then provides that the “above entitled and numbered cause” is dismissed.

The State argues that the language in the “Order to Dismiss MTRP” was a clerical error and that the trial court never intended to dismiss the entire cause. The State points to the title of the order and to the memo which asked that the trial court dismiss the State’s motion to revoke.

A review of the entire record shows that the trial judge’s intent was to dismiss the motion to revoke, not the entire cause. Although labels do not control the characterization of an order, the label may be considered. *See State v. Moreno*, 294 S.W.3d 594, 598-99 (Tex. Crim. App. 2009); *see also, generally, State ex rel. Wade v. Mays*, 689 S.W.2d 893, 897 (Tex. Crim. App. 1985) (In determining nature of relief sought, we are not limited by the “denomination” of the pleadings, but look to the pleadings’ essence, including the prayers, as well as the record.). The docket sheet reflects that a motion to revoke was

dismissed. The record reflects that Turner was continued on probation, and two more motions to revoke were filed prior to the revocation hearing. No one objected or suggested that the entire cause had been dismissed.

The Court of Criminal Appeals has addressed a circumstance in which a dismissal order was signed granting the defendant's motion, yet the trial court proceeded to adjudicate guilt and sentence the defendant. No mention was made of the dismissal order at the adjudication hearing. The Court of Criminal Appeals held that the order dismissing "pending criminal charges" against a defendant was not void, because the trial court under the deferred adjudication statute had authority "to dismiss [a]ppellant's deferred adjudication probation." *Irving v. State*, 922 S.W.2d 959, 960 (Tex. Crim. App. 1996). In *Satterwhite v. State*, the First Court of Appeals held that a dismissal order in a regular probation case was void. The necessary amount of time had not passed to permit the trial court to grant an early termination of community supervision. *Satterwhite v. State*, 36 S.W.3d 145, 147-48 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd).

Turner was on regular community supervision. *See* Tex. Code Crim. Proc. Ann. art. 42.12, § 20(a) (West Supp. 2011). He had completed over two and one-half years of the three year community supervision period. Under section 20(a), the trial court had authority to reduce or terminate the community supervision period. *Id.*

The statute provides that if the defendant has completed one-half or two years of the period (whichever is more), the trial judge reviews the defendant's record, gives

notice to the State and the defendant of the review, and considers whether to reduce or terminate the supervision period. *Id.* Under this part of section 20(a), the trial court has the authority to reduce or terminate the supervision period unless the defendant is delinquent in paying required restitution, fines, costs, or fees that the defendant has the ability to pay or the defendant has not completed court-ordered counseling or treatment. *Id.*

That does not appear to be what the trial judge did in this case, however. The matter dismissed was the earlier motion to revoke. In *Johnson v. State*, the appellate court considered the effect of an order that dismissed the “criminal action.” *Johnson v. State*, 32 S.W.3d 444, 446 (Tex. App.—Houston [1st Dist.] 2000, pet. ref’d.). The court reviewed the State’s motion to dismiss, which included a handwritten inscription “MAG only[.]” *Id.* This was understood to mean “Motion to Adjudicate Guilt only,” because the “Other” blank was checked with the notation “Probation conditions to be complied with within 3 months.” *Id.* The court reviewed the reporter’s record. In concluding that the dismissal order did not dismiss the entire cause of action, the court explained that “criminal action” meant only the motion to adjudicate guilt. *Id.* Similarly, in this case it appears the order was intended to accomplish dismissal of the earlier motion to revoke, as reflected by the title of the order. The dismissal did not deprive the trial court of jurisdiction to grant the subsequent motion to revoke and sentence Turner.

We overrule Turner's issue and affirm the judgment.

AFFIRMED.

DAVID GAULTNEY
Justice

Submitted on November 10, 2011
Opinion Delivered December 14, 2011
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Before McKeithen, C.J., Gaultney and Horton, JJ.