

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00295-CR
NO. 09-11-00296-CR
NO. 09-11-00297-CR

JAVONN JARREAL ZACHARIE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 10-10008, 10-10009, and 10-10725

MEMORANDUM OPINION

Pursuant to plea bargain agreements, appellant Javonn Jarreal Zacharie pleaded guilty to two charges of unauthorized use of a vehicle and one charge of evading arrest or detention by using a vehicle. In each case, the trial court found the evidence sufficient to find Zacharie guilty, but deferred further proceedings, placed Zacharie on community supervision for five years, and assessed a fine of \$500. The State subsequently filed a motion to revoke Zacharie's unadjudicated community supervision in each case, and the State alleged the same two violations in all three cases. Zacharie pleaded "not true" to

the alleged violations of the terms of his community supervision. After conducting an evidentiary hearing, the trial court found that Zacharie violated the conditions of his community supervision, found him guilty, and assessed punishment at two years of confinement in a state jail facility in each case. Zacharie then filed these appeals, in which he contends in three issues that the trial court's sentencing was constitutionally disproportionate and unreasonable, and that the evidence was legally insufficient to support the trial court's determination that he had violated the conditions of his community supervision. *See* U.S. CONST. amend. VIII; Tex. Const. art. I, § 13. We affirm the trial court's judgments.

In issues one and two, Zacharie argues that the trial court's sentencing was disproportionate and unreasonable, thereby violating his rights under the Eighth Amendment to the U.S. Constitution and Article I, section 13 of the Texas Constitution. *See* U.S. CONST. amend. VIII; Tex. Const. art. I, § 13. The record does not reflect that Zacharie raised his state and federal constitutional complaints in the trial court. *See* Tex. R. App. P. 33.1(a). However, even if Zacharie had preserved his constitutional issues for our review, Zacharie's arguments would still fail. Zacharie's sentences were within the statutorily-authorized range of punishment for the offenses. *See* Tex. Penal Code Ann. §§ 31.07(b), 38.04(b)(1)(B) (West 2011) (unauthorized use of a vehicle and evading arrest or detention by using a vehicle are state jail felonies), § 12.35 (West 2011) (state jail felony punishment range is 180 days to two years of confinement and a fine of up to

\$10,000). Generally, a sentence that is within the range of punishment established by the Legislature will not be disturbed on appeal. *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). In addition, a punishment that is within the statutory range for the offense is generally not excessive or unconstitutionally cruel or unusual under the Texas Constitution or the federal Constitution. *Kirk v. State*, 949 S.W.2d 769, 772 (Tex. App.—Dallas 1997, pet. ref'd); *see also Jackson v. State*, 989 S.W.2d 842, 846 (Tex. App.—Texarkana 1999, no pet.). We overrule issues one and two.

In his third issue, Zacharie contends that the evidence was legally insufficient to support the trial court's determination that he had violated the conditions of his community supervision. The State alleged in its motions to revoke that Zacharie had committed the offense of robbery on or about April 22, 2011, and had been at a location other than his residence at 6:03 p.m. on April 22, 2011.

At the evidentiary hearing, the State presented testimony from the victim of the alleged robbery. The victim testified that he knew Zacharie from the neighborhood, and he identified Zacharie at the revocation hearing. According to the victim, Zacharie walked up to him, instructed him to give Zacharie his possessions, threatened to kill him if he did not comply, and took the victim's MP3 player. The victim testified that when Zacharie approached him, Zacharie had his hand under his shirt in front of his stomach, and the victim could see a bulge that looked like a gun. The victim explained that he

wanted to drop the charges, but that he was telling the truth concerning the events that transpired.

The State also called Officer Ryan Byers of the Port Arthur Police Department as a witness. Officer Byers testified that he responded to a call about a robbery on April 22, 2011, at approximately 6:03 p.m. According to Officer Byers, Zacharie was placed into custody later that night. Zacharie also testified at the revocation hearing. Zacharie testified that he encountered the victim, asked the victim if he could borrow the victim's MP3 player, and the victim agreed. According to Zacharie, the victim's brother told Zacharie that the victim's family had called the police because the victim alleged that Zacharie had robbed him, so Zacharie gave the MP3 player to the victim's brother and left. Zacharie explained that when he arrived at his home, the police came. According to Zacharie, the police did not find a gun when they arrested him.

At a revocation hearing, the State has the burden to establish the alleged violations by a preponderance of the evidence. *Rickels v. State*, 202 S.W.3d 759, 763-64 (Tex. Crim. App. 2006); *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993). The trial court is the sole trier of facts and judge of the credibility of witnesses, and the trial court decides what weight to give to the testimony. *Cochran v. State*, 78 S.W.3d 20, 28 (Tex. App.—Tyler 2002, no pet.). We review the trial court's decision to revoke community supervision for an abuse of discretion. *Rickels*, 202 S.W.3d at 763. The trial court abuses its discretion only if its decision "was so clearly wrong as to lie outside that zone

within which reasonable persons might disagree.” *Cantu v. State*, 842 S.W.2d 667, 682 (Tex. Crim. App. 1992). We view the evidence in the light most favorable to the trial court’s ruling. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). Proof of a single violation of the terms of community supervision is sufficient to support revocation. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980).

The victim testified concerning the alleged robbery and identified Zacharie as the perpetrator. The evidence adduced at the hearing was sufficient to support the trial court’s finding that Zacharie violated the conditions of his community supervision by committing a robbery on April 22, 2011, as alleged in the State’s motion to revoke. *See Rickels*, 202 S.W.3d at 763-64; *Cantu*, 842 S.W.2d at 682; *Moore*, 605 S.W.2d at 926; *Cochran*, 78 S.W.3d at 28. Therefore, the trial court did not abuse its discretion by revoking Zacharie’s community supervision. We overrule issue three and affirm the trial court’s judgments.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on September 29, 2011
Opinion Delivered October 12, 2011
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Before McKeithen, C.J., Gaultney and Horton, JJ.