



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00467-CR

EX PARTE JALIL MARQUIS
HARGIS

FROM THE 371ST DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1460118D

MEMORANDUM OPINION¹

In this appeal from the denial of his pretrial application for writ of habeas corpus, Appellant Jalil Marquis Hargis complains in a single point that the trial court denied him due process by holding his bond insufficient for violating a condition that a community supervision employee unilaterally imposed upon him. The trial court imposed the condition that Hargis violated, not the community supervision employee. We will affirm.

¹See Tex. R. App. P. 47.4.

A magistrate set Hargis's bail at \$500,000 after he was arrested and charged with capital murder. The trial court subsequently granted Hargis a pretrial release bond, which it conditioned upon a number of written requirements. Bond condition number six required in relevant part that Hargis "[f]ully participate in and comply with the rules and requirements of the CSCD's electronic monitoring programs."² The requirement also contained the following four options: "GPS monitor only," "GPS monitor with exclusion zones," "SCRAM," and "24 Hour Home Confinement." Only the small box adjacent to "GPS monitor with exclusion zones" was selected.

The State later filed a notice that Hargis had violated condition number six of his bond, and the trial court agreed, holding Hargis's bond insufficient for the following reason: "viol of COB – GPS/curfew viols."³ Shortly thereafter, Hargis filed an application for writ of habeas corpus, arguing that he did not violate any of the bond conditions that the trial court had imposed because none of the conditions expressly provided for a curfew—the violation of which the trial court had identified in holding the bond insufficient.

At the hearing on Hargis's application, Lisa Craig, Tarrant County CSCD's "GPS officer," testified that when she met with Hargis on September 15, 2016, she reviewed both his bond conditions and a document entitled "Electronic Monitoring Program Rules and Requirements"—the very same "rules and

²CSCD means Community Supervision and Corrections Department.

³We assume that "COB" means conditions of bond.

requirements” referenced in condition number six of Hargis’s bond conditions. Items seven and eight of the Electronic Monitoring Program Rules and Requirements specifically addressed curfew—what it is, what it does and does not include, and how it is set or changed. Item eleven identified the locations where Hargis was permitted to go while on electronic monitoring—his attorney’s office, court, CSCD, vendor, work or school, and religious services. Hargis initialed each rule and requirement.

Craig further testified that although Hargis was initially placed on “lockdown,” i.e., twenty-four-hour home confinement, he was placed on a 5:00 p.m. to 8:00 a.m. curfew on September 20, 2016, an 8:00 p.m. to 8:00 a.m. curfew on September 28, 2016, and a 10:00 p.m. to 6:00 a.m. curfew on October 1, 2016. On November 10, 2016, Craig gave Hargis permission to remain out “a bit” beyond his 10:00 p.m. curfew the following day, but only at a certain location—Central Freight on Sun Valley Road and Highway 820, where he was working. Craig later learned that between 10:02 p.m. and 11:36 p.m. on November 11, 2016, Hargis had visited a house on Hulen Park Circle, a convenience store on Sycamore School Road, an apartment on Glacier Bay Lane, and a fast-food restaurant on Arbor Drive before arriving at his residence. The trial court denied Hargis’s application.

In reviewing the trial court’s decision to grant or deny habeas corpus relief, we view the facts in the light most favorable to the trial court’s ruling and uphold that ruling absent an abuse of discretion. See *Ex parte Karlson*, 282 S.W.3d

118, 127 (Tex. App.—Fort Worth 2009, pet. ref'd). An applicant for habeas corpus relief must prove his claims by a preponderance of the evidence. See *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App.), *cert. denied*, 549 U.S. 1052 (2006).

In his closing argument, Hargis's counsel argued that "if the Court wants to enforce a curfew against Mr. Hargis, [then] . . . he needs to have that in a condition of bond as set out by the Court." On appeal, Hargis argues that Craig's decision to impose a curfew constituted a unilateral modification of the trial court's bond conditions because the trial court, as part of bond condition number six, did not select the option for "24 Hour Home Confinement." Hargis's argument on appeal is slightly different than his argument in the trial court, but the underlying reasoning is the same: The trial court was responsible for imposing a curfew by its bond conditions—either expressly (according to Hargis's argument in the trial court) or via the "24 Hour Home Confinement" option (according to Hargis's argument on appeal)—and because it did not do so, Craig did not properly impose a curfew pursuant to a court-ordered bond condition but, instead, improperly pursuant to her own unilateral decision. Hargis ignores both the plain language of bond condition number six and the relevant caselaw interpreting related provisions.

Bond condition number six unambiguously required Hargis to comply with the rules and requirements of the electronic monitoring program. The rules and requirements of the electronic monitoring program expressly cover curfew. Thus,

when Craig established Hargis's curfew, she did so pursuant to a court-ordered bond condition, not as part of some unilateral act disconnected from the trial court's bond condition number six. Contrary to Hargis's trial and appellate arguments, expressly providing for a curfew in the bond conditions or selecting the "24 Hour Home Confinement" option were not the only means by which to properly impose a curfew.⁴

Further, imposing curfew as part of the rules and requirements of a supervisory entity is well established and permissible. At the hearing on Hargis's application, the trial court explained that it had "delegated *the details* of the GPS monitor[ing] and scheduling, but not *the fact* of GPS monitoring and scheduling." [Emphasis added.] The trial court's comments properly reflect the clear distinction drawn by the court of criminal appeals between permitting a supervisory entity to *carry out* a condition ordered by the trial court and the trial court's *ordering* the condition itself. See *Salmons v. State*, 571 S.W.2d 29, 30 (Tex. Crim. App. [Panel Op.] 1978) ("We hold that in ordering a probationer to obey the rules and regulations of the community-based facility in which he is placed, a trial court does not thereby improperly delegate to the facility the authority to specify the terms of probation."). The distinction is grounded not only in logic but also in practicability:

It is readily apparent that a court, by the very nature of its composition, is inherently incapable of directly implementing every

⁴Hargis asserts no argument regarding Craig's decision to initially place him on "lockdown."

detail of specified probation conditions. After prescribing, with sufficient clarity, the requisites with which a probationer must comply, a court must, of necessity, utilize other entities to carry out the details of those requisites. That pragmatic necessity has been recognized and approved by the Court of Criminal Appeals.

Vento v. State, 724 S.W.2d 948, 951 (Tex. App.—Amarillo 1987, no pet.) (citing *Salmons*). The trial court touched on this very notion at the hearing on Hargis's application:

[T]his is the exact kind of situation where the Court is properly delegating the details of supervision to CSCD.

Having a defendant call the Court with daily changes or weekly changes according to his convenience is something that I think that CSCD should be able to do for defendants, but the Court is utterly unable to do those kinds of things, to adjust curfews according to the two people's schedules, to try to accommodate them while accomplishing what is legitimately to be accomplished by GPS.

The evidence demonstrates that on November 11, 2016, Hargis violated bond condition number six by being at the wrong place at the wrong time. The trial court did not abuse its discretion by denying Hargis's application. We overrule his only point and affirm the trial court's order.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: LIVINGSTON, C.J.; MEIER and PITTMAN, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: May 25, 2017