



NUMBER 13-20-00036-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

DAVID DEON JACK,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 40th District Court
of Ellis County, Texas.**

MEMORANDUM OPINION

**Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Hinojosa**

Appellant David Deon Jack appeals the trial court's judgment revoking his community supervision and adjudicating him guilty of tampering with physical evidence, a third-degree felony. See TEX. PENAL CODE ANN. § 37.09. The trial court sentenced Jack to ten years' imprisonment. In one issue, Jack argues the judgment should be reformed to properly reflect the conditions of community supervision which the trial court found that

he violated. We affirm as modified.

I. BACKGROUND¹

A grand jury returned an indictment charging Jack with tampering with physical evidence by intentionally and knowingly concealing a “baggie of marijuana” during a traffic stop with the intent to impair its availability as evidence in the investigation. See *id.* Jack pleaded guilty pursuant to a plea bargain agreement, and the trial court placed Jack on deferred-adjudication community supervision for a period of five years.

The trial court held an adjudication hearing on the State’s Second Amended Motion to Adjudicate Guilt,² which alleged that Jack violated conditions (1), (2), (4), (9), and (10) of his community supervision. Those conditions required that Jack: (1) commit no offenses against the laws of this or any other State; (2) not use any illegal drugs or controlled substances unless prescribed by a licensed physician for legitimate medical purposes; (4) report to the community supervision department as directed by the court or the supervision officer; (9) pay a supervision fee of \$60.00 per month to the supervision officer; and (10) make \$100 monthly payments to the community supervision department for court costs, appointed attorney fees, restitution, and collection and crime stoppers fees.

Jack pleaded not true to each allegation. The State called Marissa Gallegos, Jack’s community supervision officer, as a witness. Gallegos testified that Jack tested positive

¹ This case is before the Court on transfer from the Tenth Court of Appeals in Waco pursuant to a docket-equalization order issued by the Supreme Court of Texas. See TEX. GOV’T CODE ANN. § 73.001.

² The State previously filed a Motion to Adjudicate Guilt and a First Amended Motion to Adjudicate Guilt, but the State did not pursue either motion.

for marijuana on multiple occasions and that he signed forms admitting to using marijuana. Gallegos further testified that Jack did not report to his community supervision officer for multiple months. Gallegos explained that Jack was delinquent in paying his community supervision fees in the amount of \$1,740, and he was delinquent in paying court costs, attorney fees, restitution, and fines in the amount of \$2,930. Gallegos stated that during Jack's period of community supervision, Jack was charged with multiple family violence offenses, criminal mischief, and cruelty to animals. See *id.* §§ 22.01(b)(2), 25.11, 28.03, 42.092. The trial court admitted into evidence an indictment charging Jack with continuous family violence and an order of deferred adjudication showing that Jack pleaded guilty to assault family violence by impeding breath. See *id.* §§ 22.01(b)(2)(B), 25.11. Both documents indicate that the offenses occurred during Jack's period of community supervision.

After the State rested, Jack called his mother Letatia Long as a witness. Long testified that she recently returned to the United States after working abroad for a number of years. She claimed that she would now be able to assist Jack by providing him housing, transportation, and employment opportunities. Long explained that Jack has two young children, one of whom has "a hyperthyroid issue and blindness in one of her eyes." Allison Ramirez, Jack's current girlfriend, testified that one of Jack's children was previously hospitalized with medical issues which caused Jack to feel stressed.

The trial court found the alleged violations to be true, revoked Jack's community supervision, adjudicated him guilty of tampering with physical evidence, and sentenced Jack to ten years' imprisonment. See *id.* § 37.09. Jack now appeals.

II. DISCUSSION

In his sole issue, Jack argues that “the judgment should be reformed to properly reflect that the proceedings involved the [State’s] Second Amended Motion to Adjudicate and to omit the conditions Jack allegedly violated because the Court made no such pronouncement either orally or on the docket sheet.”

A. Applicable Law

When guilt is adjudicated upon a violation of a condition of community supervision, the order adjudicating guilt sets aside the order deferring adjudication. *Taylor v. State*, 131 S.W.3d 497, 501–02 (Tex. Crim. App. 2004). Further, the trial court’s oral pronouncements control when they vary from the written judgment adjudicating guilt. *Id.* at 500, 502. Appellate courts have the power to modify the judgment of the court below to make the record speak the truth when we have the necessary information to do so. TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993). In other words, we can reform the judgment on matters that the trial court could have corrected by a judgment nunc pro tunc where the evidence necessary to correct the judgment appears in the record. *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref’d).

B. Analysis

The judgment adjudicating guilt includes the following finding: “While on deferred adjudication community supervision, Defendant violated the conditions of community supervision, as set out in the State’s AMENDED Motion to Adjudicate Guilt, as follows: (1), (2), (4), (9), (10)”. (Emphasis in original). Jack argues, and the State agrees, that the

judgment should be reformed to reflect that the trial court adjudicated Jack guilty based on the State's *Second Amended Motion to Adjudicate Guilt*. We conclude that the record clearly reflects that the underlying proceedings relate to the State's *Second Amended Motion to Adjudicate Guilt*. See TEX. R. APP. P. 43.2(b); *Bigley*, 865 S.W.2d at 27–28. Therefore, we sustain in part Jack's sole issue.

Jack further argues that the judgment should be reformed to omit any reference to the conditions which were violated because “the Court made no oral statement of the conditions violated nor is there a docket entry indicating such.”³ We disagree. The trial court orally pronounced that “based upon all the testimony and the evidence presented, the trial court does find that you violated the underlying terms and conditions of your community supervision.” The judgment references the conditions that were alleged to have been violated in the State's *Second Amended Motion to Adjudicate Guilt*. While the written judgment is more detailed than the trial court's oral pronouncement, we observe no clear variance between the two. Therefore, we conclude that we lack the necessary information to reform the judgment in this regard. See TEX. R. APP. P. 43.2(b); *Bigley*, 865 S.W.2d at 27–28. We overrule that part of Jack's issue seeking to omit the references to the specific community supervision conditions.

III. CONCLUSION

We modify the trial court's judgment to read as follows: “While on deferred adjudication community supervision, Defendant violated the conditions of community supervision, as set out in the State's *Second Amended Motion to Adjudicate Guilt*, as

³ Jack does not argue on appeal that the trial court abused its discretion in adjudicating guilt because the alleged violations were not supported by sufficient evidence.

follows: (1), (2), (4), (9), (10).” We affirm the trial court’s judgment as modified.

LETICIA HINOJOSA
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
27th day of August, 2020.