



NUMBER 13-22-00535-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

GIDGET GAYNELL GOLKA,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 36th District Court
of Aransas County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Justice Benavides**

Gidget Gaynell Golka appeals from a judgment revoking her community supervision and sentencing her to two years' confinement for the offense of taking a prohibited substance inside a correctional facility, a third-degree felony. See TEX. PENAL CODE ANN. § 38.11(b), (g). By two issues, which we have reordered, Golka argues that

the trial court abused its discretion by: (1) revoking, instead of continuing, her community supervision; and (2) denying her motion for a new trial. We affirm.

I. BACKGROUND

Golka was indicted for intentionally and knowingly taking marijuana into the Aransas County Detention Center on May 8, 2018. As part of a plea agreement, Golka pleaded guilty to the offense and was sentenced to three years' confinement, probated for a term of three years.

The State subsequently filed a motion to revoke Golka's community supervision alleging that she violated certain terms of her supervision, including failing to report to her supervision officer for more than two months and failing to submit to random drug testing during that same period. Golka pleaded true to the allegations, saying, "I know what I did [was] wrong." The trial court found the allegations true and proceeded to punishment.

Golka's attorney explained that "Golka does not believe that she will be able to successfully complete her community supervision at this time, so she is asking the Court to revoke her community supervision and sentence her to three years." Golka added,

I just want to let [the judge] know that it's not that I didn't want to. It's that I wasn't able to. And I talked to my probation officer about my—I didn't have a way to go and everything[.] . . . I was getting tickets from the city for my property[,] and they were telling me I was going to go to jail for that. And I was taking care of my elderly mom. I just wasn't able to do all of the things that w[ere] being asked of me.

Despite the original three-year sentence and Golka's request to be sentenced in conformity with that sentence, the State asked for only a two-year sentence. The trial court agreed with the State, sentenced Golka accordingly, and told Golka that she had the right to appeal the court's decision. See TEX. CODE CRIM. PROC. ANN. art.

42A.755(a)(2) (giving the trial court discretion to “reduce the term of confinement originally assessed” after revoking community supervision).

Approximately two weeks after the revocation hearing, the trial court received a pro se letter from Golka expressing her desire “to appeal if that will get [her back] to [her] mom.” Golka explained that she was concerned for her mother’s welfare because her mother is disabled, suffers from dementia and other chronic health issues, and relies on Golka as a caretaker. Golka asked the trial court to consider whether there was a way for Golka to both “pay [her] debt to society [and] be there for [her] mom” and suggested the use of an ankle monitor. The trial court appointed appellate counsel for Golka, and this appeal ensued.

II. STANDARD OF REVIEW & APPLICABLE LAW

We review a trial court’s decision to revoke community supervision for an abuse of discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). “At the revocation hearing, the State bears the burden of proving by a preponderance of the evidence the violations it alleged in the revocation motion.” *Jones v. State*, 112 S.W.3d 266, 268 (Tex. App.—Corpus Christi—Edinburg 2003, no pet.). This burden is satisfied when a defendant pleads true to the State’s allegations. *Id.* (citing *Cole v. State*, 578 S.W.2d 127, 128 (Tex. Crim. App. [Panel Op.] 1979)). Proof of a single violation will support a trial court’s order revoking community supervision. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980); *Bessard v. State*, 464 S.W.3d 427, 429 (Tex. App.—Houston [14th Dist.] 2015, pet. ref’d). Consequently, to prevail on appeal, the appellant must successfully challenge each finding that supports the revocation order.

Black v. State, 411 S.W.3d 25, 28 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (citing *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012)). Alternatively, the appellant may challenge the revocation on procedural due process grounds. See, e.g., *Cobb v. State*, 851 S.W.2d 871, 874 (Tex. Crim. App. 1993) (“Where an individual did not receive notice of the terms of probation or the motion to revoke, that individual may still challenge the revocation on due process grounds.”).

Once a violation has been proven, the trial court essentially has two options: (1) continue the defendant on community supervision, which may include a sanction or modified terms of supervision, or (2) revoke the defendant’s community supervision and assess punishment for the underlying crime. See TEX. CODE CRIM. PROC. ANN. arts. 42A.752 (titled “Continuation or Modification of Community Supervision”), 42A.755 (titled “Revocation of Community Supervision”). “Yet, when the finding of a violation of a condition of probation is supported by a preponderance of the evidence and procedural problems are not raised, the discretion of the trial court to choose the alternative of revocation is at least substantially absolute.” *Flournoy v. State*, 589 S.W.2d 705, 708 (Tex. Crim. App. [Panel Op.] 1979). We defer to the trial court’s judgment because the trial court “is more intimately familiar with the probationer than we who have only a dim profile drawn from a cold record before us.” *Id.* at 708–09.

III. ANALYSIS

Golka does not challenge the evidence supporting her revocation or claim that she was denied procedural due process. Instead, by her first issue, Golka contends that the trial court’s decision to revoke her supervision was unreasonable because her violations

were “only technical,” and she provided an adequate excuse for her inability to comply with the terms of her supervision. Golka acknowledges that she asked for revocation but suggests that her subsequent comments to the trial court about her difficult circumstances should have led the trial court to disregard her request and consider whether modified terms or additional resources would have enabled Golka to successfully complete her community supervision.

We can hardly fault the trial court for acquiescing to Golka’s explicit request to have her community supervision revoked. And, in fact, “the law of invited error estops a party from making an appellate error of an action it induced.” *Prystash v. State*, 3 S.W.3d 522, 531 (Tex. Crim. App. 1999). Accordingly, because Golka is estopped from complaining on appeal about the trial court’s initial decision to revoke her community supervision, Golka’s first issue is overruled. *See id.*

By her second issue, Golka argues that her pro se letter to the trial court constituted a motion for new trial; that it was overruled by operation of law; and that, given Golka’s changed position on revocation and the additional facts alleged in her letter, the trial court “should have granted a new trial to allow Ms. Golka to remain home with her elderly mother.” “An appellate court reviews a trial court’s denial of a motion for new trial for an abuse of discretion, reversing only if no reasonable view of the record could support the trial court’s ruling.” *Burch v. State*, 541 S.W.3d 816, 820 (Tex. Crim. App. 2017). A trial court has the authority to grant a new trial on punishment, *State v. Davis*, 349 S.W.3d 535, 538 (Tex. Crim. App. 2011), and may do so in the interest of justice so long as “the defendant shows that he is entitled to one under the law.” *State v. Thomas*, 428 S.W.3d

99, 104 (Tex. Crim. App. 2014).

Assuming without deciding that Golka's letter constituted a motion for new trial that would allow the trial court to reconsider her punishment, we conclude that the trial court did not abuse its discretion in denying her request. Sufficient proof of any violation, "technical" or otherwise, will support revocation. *Moore*, 605 S.W.2d at 926; *Bessard*, 464 S.W.3d at 429. Here, Golka pleaded true to several violations, and thus, the State satisfied its burden. See *Jones*, 112 S.W.3d at 268. Therefore, in the absence of any procedural due process complaints, the trial court's unyielding decision to revoke, rather than continue, Golka's community supervision is virtually unassailable on appeal. See *Flournoy*, 589 S.W.2d at 708. Golka's second issue is overruled.

IV. CONCLUSION

We affirm the trial court's judgment.

GINA M. BENAVIDES
Justice

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

Delivered and filed on the
24th day of August, 2023.