



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

LARRY KELLY SCOTT,	§	No. 08-13-00037-CR
	§	
Appellant,	§	Appeal from
	§	
v.	§	Criminal District Court No. 4
	§	
THE STATE OF TEXAS,	§	of Tarrant County, Texas
	§	
Appellee.	§	(TC # 0885428D)
	§	

**OPINION**

Larry Kelly Scott entered a negotiated guilty plea and was placed on deferred adjudication community supervision for possessing more than four but less than 200 grams of gamma-hydroxybutyrate (GHB). He appeals the trial court's judgment adjudicating his guilt and assessing a sentence of imprisonment for three years. We affirm.

**FACTUAL SUMMARY**

In 2004, Appellant entered a negotiated plea of guilty to possession of more than four but less than 200 grams of gamma-hydroxybutyrate (GHB). In accordance with the plea bargain, the trial court deferred adjudicating Appellant's guilt and placed him on community supervision for ten years. In 2012, the State filed a motion to proceed with an adjudication of guilt based on allegations that Appellant violated the terms and conditions of community supervision by using methamphetamine and amphetamine on multiple occasions in 2006, 2007, 2008, and on a single occasion on March 19, 2012. Appellant pled true to all of these violations except for the

violation alleged to have occurred on March 19, 2012. The State's motion additionally alleged that Appellant violated the terms and conditions of community supervision by submitting diluted urine on five occasions. Appellant entered a plea of true to each of these violations. At the evidentiary hearing, the State presented evidence showing that a specimen of Appellant's urine taken on March 19, 2012 tested positive for methamphetamine. Appellant presented evidence showing that he has serious health problems including uncontrolled hypertension, coronary artery disease, encephalopathy, vascular dementia, memory loss, and chronic kidney disease. Appellant testified and admitted he had used methamphetamine in the past, but he specifically denied using it on March 19, 2012. During cross-examination, the prosecutor confronted Appellant with his continued use of methamphetamine while on community supervision. Appellant denied using methamphetamine and he could not explain the positive urinalysis results. At the conclusion of the hearing, Appellant's attorney asked the court to not incarcerate Appellant given his serious medical conditions and instead place him under house arrest. The trial court found all of the allegations true and assessed Appellant's punishment at imprisonment for three years.

#### **DUTY TO WITHDRAW PLEA OF TRUE**

In his sole issue, Appellant argues that the trial court abused its discretion by failing to *sua sponte* withdraw Appellant's plea of true to the motion to revoke because his testimony during the revocation hearing reflected that he was confused about the allegations and his plea and he was really contending that the allegations in the State's petition were not true. As noted by the State, it is well established that a trial court does not have a duty to *sua sponte* withdraw a

plea of true even where the probationer takes the stand and raises a defensive issue. *See Moses v. State*, 590 S.W.2d 469, 470 (Tex.Crim.App. 1979). Even if the law supported Appellant's contention, the error would not be reversible because the revocation order was not based solely on Appellant's plea of true.

Appellate review of an order revoking community supervision is limited to determining whether the trial court abused its discretion. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex.Crim.App. 1984). The trial court does not abuse its discretion if the order revoking community supervision is supported by a preponderance of the evidence; in other words, the greater weight of the credible evidence would create a reasonable belief that the defendant has violated a condition of his probation. *Rickels v. State*, 202 S.W.3d 759, 763-64 (Tex.Crim.App. 2006). If a single ground for revocation is supported by a preponderance of the evidence and is otherwise valid, then an abuse of discretion is not shown. *Sanchez v. State*, 603 S.W.2d 869, 871 (Tex.Crim.App. 1980); *Gordon v. State*, 4 S.W.3d 32, 35 (Tex.App.--El Paso 1999, no pet.). Because the State presented evidence establishing that Appellant violated the terms and conditions of probation by using methamphetamine on March 19, 2012, the trial court did not abuse its discretion by revoking community supervision. We overrule Issue One and affirm the judgment of the trial court.

February 4, 2015

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, J., and Barajas, C.J., (Senior Judge)  
(Barajas, C.J., Senior Judge, sitting by assignment, not participating)

(Do Not Publish)