



ANTONIO SALAZAR TORRES, JR.,	§	No. 08-19-00214-CR
Appellant,	§	Appeal from the
v.	§	109th District Court
THE STATE OF TEXAS,	§	of Crane County, Texas
Appellee.	§	(TC# 1720)

## **OPINION**

Appellant, Antonio Salazar Torres, appeals his conviction of aggravated sexual assault of a child. TEX.PENAL CODE ANN. § 22.021. In a single issue,<sup>1</sup> Appellant claims the trial court abused its discretion by revoking his community supervision and adjudicating his guilt. We affirm.

### **BACKGROUND**

#### ***Factual Background***

In 2015, Appellant was charged with two counts of aggravated sexual assault of a child. The subject incidents of the investigation occurred between 2007 and 2008, when Appellant was about fourteen-years old. In 2017, Appellant was placed on ten years' deferred adjudication. In 2019, the State filed a motion to adjudicate alleging twelve violations<sup>2</sup> of Appellant's probation. The State alleged the following violations:

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<sup>1</sup> Although Appellant frames his complaint as two issues, for purposes of legal, sound reasoning, we consolidate them into one single issue.

<sup>2</sup> The trial court noted twelve violations alleged by the State, however the State's motion mistakenly contained thirteen violations. This is so because there are two Violation #3s listed in the State's motion.

Violation #1 Defendant was arrested on 11/19/2018 in Ector County for Failure to Comply with Registration Requirements (F3). This is a violation of rule 1 of the Order Granting Supervision[.]

. . .

Violation #2 Defendant failed to report by mail for the months of February, March, April and July 2018. This is a violation of rule 4 of the Order Granting Community Supervision[.]

. . .

Violation #3 Defendant failed to obey all rules and regulations of the community supervision and corrections department. This is a violation of rule 4 of the Order Granting Supervision[.]

. . .

Violation #3 Defendant failed to report within two working days his arrest on 11/19/18 in Ector County for Failure to Comply with Registration Requirements (F3). This is a violation of rule 9 of the Order Granting Supervision[.]

. . .

Violation #4 Defendant failed to make a court-ordered payment to this department for the month of July, 2018. This is a violation of the specific financial conditions of the Order Granting Supervision[.]

. . .

Violation #5 Defendant failed to report by mail for the months of February, March, April and July 2018. This is a violation of rule 1 of the special conditions for Sex Offenders of the Order Granting Supervision[.]

. . .

Violation #6 Defendant failed to participate in individual, group, or family counseling as directed by the therapist of the sex offender treatment program. This is a violation of rule 2 of special conditions for Sex Offenders of the Order Granting Supervision[.]

. . .

Violation #7 Defendant was not in compliance with conditions of community supervision. See attached report. This is a violation of rule 4 of the special conditions for Sex Offenders of the Order Granting Supervision which states:

4. Submit to polygraph examination in order to assist in facilitating sex offender treatment and to determine whether or not the defendant is in compliance with the conditions of community supervision and pay for same.

Violation #8 Defendant was found in possession of pornography/erotica on his cell phone and personal laptop. This is a violation of rule 14 of the special conditions for Sex Offenders of the Order Granting Supervision[.]

. . . .

Violation #9 Defendant failed to register a cell phone and a tablet with his supervision officer. . . . This is a violation of rule 15 of the special conditions for Sex Offenders of the Order Granting Supervision[.]

. . . .

Violation #10 Defendant was found in possession of nude pics from social websites. . . . This is a violation of rule 16 of the special conditions for Sex Offenders of the Order Granting Supervision[.]

. . . .

Violation #11 Defendant admitted to accessing the Internet on his cell phone and tablet without approval from his supervision officer. This is a violation of rule 17 of the special conditions for Sex Offenders of the Order Granting Supervision[.]

. . . .

Violation #12 Defendant entered into agreement with social media sites. This is a violation of rule 18 of the special conditions for Sex Offenders of the Order Granting Supervision[.]

The trial court found all violations true with the exception of allegation seven. Following a punishment hearing, in which numerous witnesses testified for the State and Appellant, the court adjudicated Appellant guilty.

### ***Procedural Background***

Appellant was indicted of aggravated sexual assault of a child. TEX.PENAL CODE ANN. § 22.021. Following a guilty plea, the trial court placed him on ten years' deferred adjudication probation. The State then filed a motion to adjudicate guilt based on the alleged probation

violations. The trial court adjudicated Appellant guilty and sentenced him to twenty years' imprisonment in the Texas Department of Criminal Justice Institutional Division. This appeal followed.

## **DISCUSSION**

In his sole issue on appeal, Appellant asserts the trial court abused its discretion in revoking his community supervision and adjudicating his guilt. Appellant specifically claims two conditions of community supervision imposed by the trial court, which prohibited him from accessing the internet or websites without prior approval, violate his First Amendment rights.

### ***Standard of Review & Applicable Law***

Appellate review of an order revoking probation is limited to abuse of the trial court's discretion. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex.Crim.App. 1984). In probation revocation cases, the State must prove by a preponderance of the evidence that a condition of supervision was violated. *Id.* This burden is satisfied when the greater weight of the credible evidence creates a reasonable belief that a condition of community supervision has been violated. *Rickels v. State*, 202 S.W.3d 759, 763-64 (Tex.Crim.App. 2006). In reviewing a revocation order, we view the evidence in a light most favorable to the verdict, giving deference to the trial court's credibility determinations and to the findings of the violations as true or not. *Garrett v. State*, 619 S.W.2d 172, 174 (Tex.Crim.App. 1981).

In orders alleging numerous violations, the Court of Criminal Appeals has long held one sufficient ground for revocation will support the trial court's order revoking community supervision. *Jones v. State*, 571 S.W.2d 191, 193-94 (Tex.Crim.App. 1978). Thus, Appellant must successfully challenge each violation and present facts to show reasonable grounds exist to overturn each of the trial court's findings of true that led to his adjudication. *Smith v. State*, 286

S.W.3d 333, 342 (Tex.Crim.App. 2009).

### *Analysis*

Appellant challenges two conditions that prohibited him from accessing the internet without court approval. Specifically, the two conditions he challenges state:

17. Not access, participate in or have any contact with the Internet, World Wide Web, or electronic mail unless such is approved by the Supervision Officer or the Court.
18. Not enter into or maintain any type agreement [sic] with any individual or entity for the purpose of obtaining access to the Internet, World Wide Web, or electronic mail unless such is approved by the Supervision Officer or the Court.

Appellant does not dispute having committed the violations, but rather, challenges the conditions on constitutional grounds. Appellant maintains the trial court's ban on internet access without prior approval violated his First Amendment rights to free speech. Appellant characterizes these prohibitions as a "blanket ban" on internet access and relies on a United States Supreme Court decision to support his contentions--*Packingham v. North Carolina*, 137 S.Ct. 1730 (2017). Irrespective of us finding Appellant's substantive reliance on *Packingham* as misplaced, Appellant has failed to preserve this point of error for appellate review.

As a threshold matter, there must be preservation of error by a specific and timely objection at the trial level to bring the issue on appeal. *See Moore v. State*, 371 S.W.3d 221, 225 (Tex.Crim.App. 2012)(an appellate issue that is not preserved at trial is ordinarily forfeited). The granting of community supervision is not a right, but a contractual privilege, and conditions of probations are terms of a contract entered into between the trial court and the defendant. *Speth v. State*, 6 S.W.3d 530, 533-34 (Tex.Crim.App. 1999). The State argues any conditions not objected to at the trial level were affirmatively accepted as terms of the contract, and by entering the contractual relationship without objection, Appellant affirmatively waived any rights encroached

by the terms of the contract. *Id.* We agree. Appellant accepted the terms of his community supervision without objection, and it was only until violations were alleged two years later, where during the adjudication hearing, defense counsel objected for the first time on constitutional grounds. Additionally, community supervision is part of the trial court's judgment; it is not viewed as part of the sentence to be objected to. *See Speth*, 6 S.W.3d at 532. Appellant himself acknowledges his untimely objection, but nonetheless urges this Court to consider his claim. In his brief, Appellant states: "Though the State appears correct that the First Amendment claim has been forfeited because the objection was untimely, Mr. Torres still urges the claim as part of this direct appeal, particularly given its constitutional nature." This we cannot do. Appellant has cited to no authority, nor are we aware of any, that would render this issue preserved.

We therefore need not address the merits of Appellant's sole claim. Furthermore, even if Appellant had properly preserved appellate review because he challenges only two of the twelve violations, Appellant's conviction would still stand for failure to present facts to show that reasonable grounds exist to overturn *each* of the trial court's findings of true. *See Smith*, 286 S.W.3d at 342.

Appellant's sole issue is overruled.

### CONCLUSION

For these reasons, we affirm.

July 9, 2021

YVONNE T. RODRIGUEZ, Chief Justice

Before Rodriguez, C.J., Palafox, and Alley, JJ.

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