

Affirmed as Modified; Opinion Filed October 27, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-15-01056-CR

**FRANK DONOVAN MCCOLLUM, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 3
Dallas County, Texas
Trial Court Cause No. F-1133471-J**

MEMORANDUM OPINION

Before Justices Francis, Stoddart, and Schenck
Opinion by Justice Stoddart

Frank Donovan McCollum appeals the trial court's judgment adjudicating guilt for aggravated sexual assault of a child younger than fourteen years of age. In accordance with a negotiated plea agreement, the trial court deferred its finding of guilt and placed appellant on six years' community supervision. The State subsequently filed a motion to proceed with an adjudication of guilt. Following a hearing, the trial court adjudicated appellant guilty and sentenced him to 15 years' confinement.

In thirteen issues, appellant asserts the trial court erred by revoking his probation, permitting inadmissible hearsay testimony, and allowing the probation officer to testify in violation of his rights under the Confrontation Clause. He also requests that we reform the judgment to correctly reflect his pleas to the allegations in the State's motion to adjudicate and

the trial court's findings on each alleged probation violation. The State agrees the judgment should be modified. We modify the judgment and affirm as modified.

The State's motion to adjudicate alleged that appellant violated eleven conditions of community supervision:

(b) Frank Donovan McCollum did violate condition (b) in that he did admit to using Alcohol and or abusing Prescription Medication.

(h) Frank Donovan McCollum did violate condition (h) in that s(he) did not pay Court Costs and Fines as ordered by the court and is currently delinquent \$294.00.

(j) Frank Donovan McCollum did violate condition (j) in that s(he) did not pay community supervision fees as directed and is currently delinquent.

(l) Frank Donovan McCollum did violate condition (l) in that s(he) did not complete Community Service hours as directed.

(n) Frank Donovan McCollum did violate condition (n) in that s(he) did not pay the Urinalysis fee as ordered by the court and is currently delinquent.

(p) Frank Donovan McCollum did violate condition (p) in that s(he) did not abstain from having contact with a Child 17 years of age or younger as directed.

(v) Frank Donovan McCollum did violate condition (v) in that s(he) did not abstain from view [sic] pornography as directed.

(x) Frank Donovan McCollum did violate condition (x) in that s(he) did not did not pay Sex Offender Fee as ordered by the court and is currently delinquent.

(y) Frank Donovan McCollum did violate condition (y) in that s(he) did not faithfully participate in Sex Offender Treatment as directed and was unsuccessfully discharged on 02/12/2015.

(z) Frank Donovan McCollum did violate condition (z) in that s(he) failed to submit and pass a clinical polygraph as directed.

(bb) Frank Donovan McCollum did violate condition (bb) in that s(he) did not abstain from using the Internet as directed.

Appellant pleaded guilty to three violations: failure to pay community supervision fees and drug testing fees and failure to complete community service. The trial court accepted the pleas of true to allegations (j), (l), and (n), and found allegations (p), (v), (y), (z), and (bb) to be true. In his first eight issues, appellant asserts the trial court erred by revoking his community supervision for violating these provisions.

We review a trial court's decision to adjudicate guilt based on the violation of a condition of a defendant's community supervision for abuse of discretion. *Ross v. State*, No. 05-15-00351-

CR, 2016 WL 929277, at *5 (Tex. App.—Dallas Mar. 11, 2016, no pet.) (citing *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013)). Adjudication is appropriate when a preponderance of the evidence supports one of the State’s allegations that the defendant violated a condition of his community supervision. *Id.* (citing *Leonard v. State*, 385 S.W.3d 570, 576 (Tex. Crim. App. 2012)). “A preponderance of the evidence means that greater weight of the credible evidence which would create a reasonable belief that the defendant has violated a condition of his probation.” *Id.* (quoting *Hacker*, 389 S.W.3d at 865). When determining whether the trial court abused its discretion in finding a defendant violated a condition of community supervision, the evidence should be viewed in the light most favorable to the trial court’s findings and ruling. *Id.* (citing *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981)). A single violation of a term of community supervision is sufficient to support the trial court’s decision to proceed with an adjudication of guilt. *Id.* (citing *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012) (proof of violation of single condition of community supervision will support revocation); *Smith v. State*, 286 S.W.3d 333, 342 (Tex. Crim. App. 2009) (one sufficient ground for revocation would support trial court’s order revoking community supervision)).

In his first, seventh, and eighth issues, appellant asserts the trial court abused its discretion by revoking his probation for violating the conditions to which he pleaded true. A plea of true, standing alone, is sufficient to support revocation of community supervision. *See Walker v. State*, No. 05-16-00267-CR, 2016 WL 5851885, at *2 (Tex. App.—Dallas Sept. 30, 2016, no. pet. h.) (citing *Cole v. State*, 578 S.W.2d 127, 128 (Tex. Crim. App. [Panel Op.] 1979)). Because proof of even a single violation of community supervision is sufficient to support revocation, appellant’s pleas of guilty to three violations are sufficient to support the trial court’s revocation order. We overrule appellant’s first, seventh, and eighth issues.

There are additional grounds independent from the violations to which appellant pleaded true that are sufficient to support the trial court's decision. In his second issue, appellant challenges the trial court's finding that he violated condition (y) which required him to participate in sex offender treatment. The court heard testimony from Leah McDonald, a probation officer who supervised appellant while he was on community supervision, and Stacy Dupler, a licensed sex offender treatment provider who treated appellant. They both testified that appellant was required to participate in and successfully complete sex offender treatment, which he did not do before he was discharged. Dupler told the trial court that appellant "didn't make any progress in regards to the goals of treatment" and she described the numerous problems she encountered while working with appellant. She also discussed problems that appellant's therapy group had with him. She recounted that "the group actually put him on a contract, asking him to abide by certain stipulations or they did not want him in that group anymore" because "he would say things that were pretty horrific and with a smile on his face." Appellant subsequently was discharged without completing treatment.

Viewing the evidence in the light most favorable to the trial court's findings and ruling, we conclude the trial court did not abuse its discretion by concluding appellant violated condition (y) of his community supervision. This finding alone also is sufficient to support the revocation of community supervision. *See Ross*, 2016 WL 929277, at *5. We overrule appellant's second issue.

In light of our resolution of appellant's first, second, seventh, and eighth issues, we do not need to consider his third through sixth issues or his ninth through eleventh issues. *See TEX. R. APP. P. 47.1.*

In his twelfth and thirteenth issues, appellant asserts we should reform the judgment to reflect his pleas to the allegations in the State's motion to adjudicate and reform the judgment to

correctly reflect the trial court's findings on each probation violation allegation. The State agrees. The trial court's judgment reflects that appellant pleaded "true" to the State's motion to adjudicate. Although appellant pleaded true to violating conditions (j), (l), and (n), he pleaded not true to the other eight allegations. Because the necessary information is in the record for us to do so, we will reform the judgment adjudicating guilt to show appellant entered a plea of true to violating conditions (j), (l), and (n), and entered a plea of not true to violating conditions (b), (h), (p), (v), (x), (y), (z), and (bb). See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref'd). Further, based on the record, we modify the trial court's judgment to reflect the trial court found appellant violated conditions (j), (l), (n), (p), (v), (y), (z), and (bb).

As modified, we affirm the trial court's judgment.

/Craig Stoddart/

CRAIG STODDART
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

FRANK DONOVAN MCCOLLUM,
Appellant

No. 05-15-01056-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 3, Dallas County, Texas
Trial Court Cause No. F-1133471-J.
Opinion delivered by Justice Stoddart.
Justices Francis and Schenck participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

We **STRIKE** the portion of the trial court's judgment showing that appellant Frank Donovan McCollum pleaded TRUE to the Motion to Adjudicate.

The judgment shall show that appellant Frank Donovan McCollum pleaded TRUE to violating conditions (j), (l), and (n) and he pleaded NOT TRUE to violating conditions (b), (h), (p), (v), (x), (y), (z), and (bb).

The judgment shall show that the trial court found McCollum violated conditions (j), (l), (n), (p), (v), (y), (z), and (bb).

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 27th day of October, 2016.