

MODIFY and AFFIRM; and Opinion Filed December 19, 2016.



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

No. 05-15-01196-CR

**MICHAEL POLLARD, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 292nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1060037-V**

MEMORANDUM OPINION

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

Appellant Michael Pollard appeals the adjudication of his guilt and conviction for the offense of aggravated sexual assault of a child. Appellant waived a jury trial and entered a negotiated guilty plea before the court. Pursuant to that plea agreement, the trial court deferred adjudication of guilt and placed appellant on community supervision for seven years. Subsequently, the State moved to adjudicate appellant's guilt, claiming appellant had violated conditions of community supervision. At the hearing, appellant pleaded not true to the alleged violations. The trial court subsequently found the allegations to be true, adjudicated his guilt, and sentenced him to thirty-five years' confinement in the Texas Department of Criminal Justice Institutional Division. In two issues, appellant argues the evidence is insufficient to support the trial court's decision to proceed to an adjudication of guilt, and the judgment fails to reflect that appellant pleaded not true to the allegations contained in the amended motion to revoke

probation. We modify the trial court's judgment to reflect appellant pleaded not true to the allegations in the motion. As modified, we affirm the trial court's judgment. Because all issues are settled in the law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

FACTUAL AND PROCEDURAL BACKGROUND

The State sought to revoke appellant's probation alleging violations of several conditions of appellant's community supervision. More particularly, the State alleged appellant (1) failed to register as a sex offender, (2) failed to report to his community supervision office from August 2011 through March 2012, (3) was unsuccessfully discharged from his sex-offender treatment program, (4) failed to take a polygraph examination, (5) failed to pay certain fines, costs, and fees, (6) failed to complete community-service hours, and (7) failed to comply with the requirements of the Comprehensive Assessment and Treatment Services Program. Appellant entered a plea of not true to the State's allegations. Following a competency evaluation, the trial court ultimately found appellant had violated the conditions of his community supervision, adjudicated him guilty of the charged offense, and sentenced him to thirty-five years in prison. This appeal followed.

STANDARD OF REVIEW

In his first issue, appellant argues the evidence is insufficient to support revocation of his probation. The State's burden of proof at a revocation hearing is to show by a preponderance of the evidence that a defendant violated the terms of his community supervision, meaning that the greater weight of the credible evidence must create a reasonable belief that the defendant has violated a condition of his probation. *Rickels v. State*, 202 S.W.3d 759, 764 (Tex. Crim. App. 2006). "The State's burden of proof informs the appellate standard of review for legal sufficiency of the evidence." *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013).

Thus, when reviewing the sufficiency of the evidence in a revocation proceeding, a reviewing court need only determine whether the trial court abused its discretion. *Id.*

DISCUSSION

I. Revocation of Probation

A trial court does not abuse its discretion if any single ground for revocation is supported by a preponderance of the evidence and is otherwise valid. *Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. [Panel Op.] 1980). In other words, a single sufficient ground will support a court's order revoking community supervision. *Jones v. State*, 571 S.W.2d 191, 193–94 (Tex. Crim. App. 1978). Consequently, while the State alleged appellant violated numerous conditions of community supervision, only one violation is necessary to support the trial court's decision to revoke probation and adjudicate appellant guilty of the charged offense.

As part of his plea agreement, appellant was required to “[o]bey all rules and regulations of the Supervision Department, and report to the Supervision Officer as directed by the Judge or Supervision Officer, to-wit: WEEKLY/TWICE MONTHLY/ OR MONTHLY ON APPOINTED DATE/TIME.” The State alleged appellant violated this requirement by failing to report to his community supervision office in the month of August 2011 and thereafter and the trial court found appellant violated this condition.

Appellant does not dispute that he failed to report to his community supervision office; rather, he claims he needed assistance to comply with his reporting requirements due to an intellectual deficiency and that, at some undisclosed time, the aunt who was assisting him was no longer able to do so. Thus, he claims he did not willfully violate his probation by failing to report. Appellant cites no authority for the proposition that the failure to report must be willful. Instead, appellant relies upon *Aranda v. State*, 684 S.W.2d 794 (Tex. App.—Fort Worth 1985, pet. ref'd), in which the court held the uncontroverted evidence established Aranda complied

with the reporting requirements, and noted that there was no evidence of a willful violation of the reporting condition. While it is true that the trial court must consider the defendant's ability to pay before revoking supervision for the failure to pay certain fees, *see Gipson v. State*, 383 S.W.3d 152, 157 (Tex. Crim. App. 2012), we find no authority for a similar requirement when the accused claims that he was unable to report. *See Sundwall v. State*, No. 11-12-00141-CR, 2014 WL 1030689, at *1 (Tex. App.—Eastland Mar. 14, 2014, no pet.).

We conclude the record supports, by a preponderance of the evidence, that appellant failed to comply with his reporting obligations. Thus, the trial court did not abuse its discretion in finding appellant violated a probation requirement. Because a single violation of a probation requirement is sufficient to support the trial court's decision to revoke probation and adjudicate appellant guilty of the charged offense, we need not address the remaining grounds for revocation and adjudication. *Sanchez*, 603 S.W.2d at 871. We overrule appellant's first issue.

II. Modification of Judgment

In his second issue, appellant contends the judgment does not accurately reflect that appellant pleaded not true to the allegations in the amended motion to revoke probation. The State concedes that the judgment does not accurately reflect appellant's plea and the record shows appellant entered a plea of not true.

We have the authority to modify the trial court's judgment to make the record speak the truth. TEX. R. APP. P. 43.2(b); *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992). Accordingly, we sustain appellant's second issue and modify the operative judgment dated September 11, 2015 to reflect appellant pleaded not true to the allegations in the State's amended motion to revoke probation.

CONCLUSION

As modified, we affirm the trial court's judgment. We order the trial court to enter an amended judgment noting the correct plea.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

DO NOT PUBLISH
TEX. R. APP. P. 47

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

JUDGMENT

MICHAEL POLLARD, Appellant

No. 05-15-01196-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F-1060037-V.

Opinion delivered by Justice Schenck.

Justices Francis and Stoddart participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** to reflect that appellant Michael Pollard pleaded not true to the allegations in the State's amended motion to revoke probation.

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

Judgment entered this 19th day of December, 2016.