

AFFIRM; and Opinion Filed July 29, 2016.



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

No. 05-15-01368-CR

**DAVID EDWARD MUIR, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 283rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F07-71270-T**

MEMORANDUM OPINION

Before Justices Lang-Miers, Evans, and Brown
Opinion by Justice Brown

David Edward Muir appeals the revocation of his community supervision. In a single issue, appellant contends the trial court reversibly erred in failing to admonish him on the range of punishment to which he was subject as a result of his plea of true. We affirm the trial court's judgment revoking community supervision.

BACKGROUND

Appellant waived a jury and pleaded guilty to possession of child pornography. *See* TEX. PENAL CODE ANN. § 43.26(a)(1), (d) (West Supp. 2015). After finding appellant guilty, the trial court sentenced him to five years' imprisonment and assessed a \$2,500 fine. A year later, the trial court granted appellant's motion for shock probation and probated the sentence for ten years. The State subsequently filed a motion to revoke, alleging appellant violated a condition of his community supervision. The trial court denied the motion to revoke and continued appellant

on community supervision, amending the conditions on several occasions. The State later again moved to revoke appellant's community supervision, alleging he violated several conditions. In a hearing on the motion, appellant pleaded true to all of the allegations. The trial court found the allegations true, revoked appellant's community supervision, and assessed punishment at five years' imprisonment.

APPLICABLE LAW

Appellate review of an order revoking community supervision is limited to determining whether the trial court abused its discretion. *See Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). An order revoking community supervision must be supported by a preponderance of the evidence, meaning the greater weight of the credible evidence that would create a reasonable belief that the defendant has violated a condition of probation. *Id.* at 763–64. A finding of a single violation of community supervision is sufficient to support revocation. *See Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. [Panel Op.] 1980). Thus, in order to prevail on appeal, appellant must successfully challenge all the findings that support the revocation order. *See Jones v. State*, 571 S.W.2d 191, 193–94 (Tex. Crim. App. [Panel Op.] 1978).

DISCUSSION

In his sole issue, appellant contends his constitutional rights were violated when the trial court failed to admonish him regarding the applicable punishment range before accepting his plea of true to the motion to revoke. Appellant argues nothing shows he fully understood the punishment range to which he would be subjected upon revocation and he was harmed by the trial court's failure to admonish him. The State responds that the trial court did not abuse its discretion by failing to admonish appellant about the punishment range before accepting his plea of true because it had no duty to do so. We agree with the State.

A trial court must admonish a defendant as to the range of punishment for an offense prior to accepting a plea of guilty or nolo contendere. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13 (West Supp. 2015). However, the Court of Criminal Appeal has held that in the context of revocation proceedings, the trial court is not required to admonish a defendant pursuant to article 26.13 of the Code of Criminal Procedure. *See Gutierrez v. State*, 108 S.W.3d 304, 309–10 (Tex. Crim. App. 2003). Thus, the trial court had no duty to admonish appellant as to the full range of punishment.

Moreover, nothing in the record reflects that appellant did not understand that the full range of punishment was available to the trial court once it revoked his community supervision. We conclude the trial court did not abuse its discretion in revoking appellant’s community supervision. We resolve appellant’s sole issue against him.

We affirm the trial court’s judgment revoking community supervision.

/Ada Brown/

ADA BROWN
JUSTICE

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TEX. R. APP. P. 47

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

JUDGMENT

DAVID EDWARD MUIR, Appellant

No. 05-15-01368-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F07-71270-T.

Opinion delivered by Justice Brown. Justices
Lang-Miers and Evans participating.

Based on the Court's opinion of this date, the judgment revoking community supervision of the trial court is **AFFIRMED**.

Judgment entered this 29th day of July, 2016.