AFFIRM; and Opinion Filed January 10, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00309-CR
No. 05-16-00310-CR
No. 05-16-00311-CR

EDEN CONSUELO AMAYA, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F-1259498-U, F-1259499-U, and F-1340582-U

MEMORANDUM OPINION

Before Justices Lang-Miers, Myers, and Richter[1]
Opinion by Justice Lang-Miers

In 2013, Appellant, Eden Consuelo Amaya, received seven years' deferred adjudication community supervision for two charges of aggravated robbery with a deadly weapon and one charge of injury to a child. Two years later, the State filed a motion to revoke in each case alleging that appellant had violated terms and conditions of his community supervision. Appellant pleaded true to some of the allegations and not true to others without the benefit of a plea bargain. The trial court found all of the allegations true, adjudicated appellant guilty in each case, and assessed punishment at twenty-five years in the two aggravated robbery charges and ten years in the injury to a child charge, all to run concurrently.

[1] The Hon. Martin Richter, Justice, sitting by assignment.

On appeal, appellant argues that the trial court committed reversible error by being biased against him and conducting itself as an adversary throughout the proceedings; by failing to give him an opportunity to allocute; and by assessing a disproportionate sentence. We review a trial court's decision to adjudicate the guilt of a defendant who is on deferred adjudication community supervision for an abuse of discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). We affirm the trial court's judgments.

Issue One

In issue one, appellant argues that the trial court committed fundamental error by being biased and advocating against him.

In an adjudication proceeding, the defendant is entitled to a neutral and detached hearing officer. *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973). We presume the trial court was neutral and detached unless there is a clear showing to the contrary. *Brumit v. State*, 206 S.W.3d 639, 645 (Tex. Crim. App. 2006). Bias against a defendant is not shown merely by "unfavorable rulings towards an individual or her case, but instead must 'connote a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved . . . or because it is excessive in degree.'" *Abdygapparova v. State*, 243 S.W.3d 191, 198 (Tex. App.—San Antonio 2007, pet. ref'd) (quoting *Liteky v. United States*, 510 U.S. 540, 550 (1994)). Appellant "must show a 'deep-seated favoritism or antagonism that would make fair judgment impossible.'" *Id*. (quoting *Liteky*, 510 U.S. at 555).

Appellant contends that the trial court violated his "core fundamental right to a neutral/unbiased jurist" by (1) prompting the State to introduce appellant's signed plea of true to the allegations, and (2) immediately sustaining the State's hearsay objection to certain evidence and not requiring the State to rebut appellant's legal basis for admission of the evidence. Appellant argues that the trial court took "on the role of an adversarial advocate" and took "it

upon itself to prompt the State into making the record stronger against Appellant's interests." We disagree.

The State alleged that appellant violated the conditions of community supervision in multiple ways, six of which were by committing six new offenses. Of the six new offenses, appellant pleaded true to four and not true to two, disorderly conduct and possession of a firearm. Instead of abandoning the two allegations to which appellant pleaded not true, the State chose to present evidence to support those allegations. Appellant contends that the court's ruling on a hearsay objection during the testimony of one of the police officers was fundamental error.

During appellant's cross-examination of one of the police officers involved in the disorderly conduct and possession of a firearm violations, appellant asked, "Do you remember – well, do you remember talking to somebody – not a security guard, not a police officer – telling you that that gun –." Appellant did not complete the question before the State lodged a hearsay objection. The court immediately sustained the objection, but appellant explained that "[a]ll three officers are claiming they didn't have a conversation with a guy – the actual guy – who has been identified by both security officers as the one that pulled the gun out of the car, the guy whose car the gun was pulled out of." When the court asked for appellant's "legal objection," appellant said he was "not offering it for the truth of the matter asserted therein." The court sustained the objection again without asking the State to respond to appellant's explanation for why the question did not call for hearsay. Appellant contends it was fundamental error for the court not to further inquire of the State to respond to appellant's explanation.

Appellant asked the officer to testify about what another person told him outside of court; in other words, hearsay. *See* TEX. R. EVID. 801(d)(1) (defining hearsay). Appellant argues that after the court sustained the State's hearsay objection, he "made certain to make clear that the exclusion of the testimony . . . was not proper . . . because the testimony . . . did not even meet

the definition of hearsay" because he was not offering it for its truth. But appellant has not cited authority stating a trial court has a duty to inquire further of the parties instead of ruling on an objection immediately, or why the court's failure to ask the State for a response equated to a bias or prejudice against him that amounts to fundamental error. "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky*, 510 U.S. at 555. That is especially true when those rulings are unaccompanied by opinion or comment that evidences the degree of antagonism required. *Id*.

We conclude that appellant has not shown that the trial court abused its discretion in its ruling. However, appellant also argues that this ruling and the following exchange that occurred at the end of the hearing combine to be fundamental error:

> THE COURT: All right. Does the State have anything else it wishes to offer –
>
> [THE STATE]: No, Your Honor.
>
> THE COURT: – by the way of the plea of true for the remaining . . .
>
> [THE STATE]: I have nothing further as far as the plea of true.
>
> THE COURT: No, I'm saying, are you offering the plea of true, 'cause you have yet to offer it.
>
> [THE STATE]: Oh, sorry. The State will offer defendant's signed, written, voluntary plea of true and stipulation of evidence in each case.

Appellant stated "no objection," but on appeal contends that the court acted as his adversary and as an advocate for the State by prompting the State to offer the signed plea of true. As a result, appellant contends, the trial court committed fundamental error to which he was not required to object. *See* TEX. R. EVID. 103(e) (court may consider fundamental error even if claim of error not properly preserved by objection); *Mendex v. State*, 138 S.W.3d 334, 340 (Tex. Crim. App. 2004).

But appellant orally pleaded true to all but two of the allegations and said he was pleading true because he violated the conditions as alleged. An oral plea of true and confession

to the violations, standing alone, is sufficient evidence upon which to adjudicate guilt. *Cole v. State*, 578 S.W.2d 127, 128 (Tex. Crim. App. [Panel Op.] 1979). Consequently, even without the signed plea of true, the trial court did not abuse its discretion by adjudicating appellant's guilt and, as a result, did not commit fundamental error. *See id.*

Additionally, appellant does not challenge the trial court's findings of true on the disorderly conduct and possession of a firearm allegations, the only two allegations to which appellant did not plead true. A finding of a single violation of community supervision is sufficient to support revocation. *See Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980); *Jones v. State*, 571 S.W.2d 191 193–94 (Tex. Crim. App. [Panel Op.] 1978). We resolve issue one against appellant.

Issue Two

In issue two, appellant argues that the trial court violated his "common law right to allocution" and contends he should be given a new punishment hearing. Appellant concedes that the trial court complied with the requirements of the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 42.07 (West 2006) (stating that trial court, before pronouncing sentence, must ask defendant whether there is any reason sentence should not be pronounced). But he argues that his common law right of allocution goes farther than the statutory requirement. He contends that he should be given the opportunity "to make one final plea for mercy and/or in mitigation of punishment before the trial court pronounced sentence."

A claim that an appellant was deprived of an opportunity to allocute must be preserved below by objection. *See McClintick v. State*, 508 S.W.2d 616, 617–18 (Tex. Crim. App. 1974) (op. on reh'g) (appellant's contention that court did not give him opportunity to allocute must be preserved by objection). Because appellant did not object, issue two presents nothing for our review. *See id.*

Nevertheless, after the court adjudicated appellant guilty, appellant's sister, stepfather, and mother testified during punishment about appellant's good character, how his addiction was the source of his problems, and how appellant is a different person when he's around his two-year-old child. Counsel specifically asked appellant's mother, "What good things can you tell the Court about your son that might not appear in any of the files that we've been through today?" She said appellant is "a good person, a good son, a good father. He has a good heart."

Appellant also testified about his drug addictions, how he struggled to cope after the death of his brother, and ended up with the wrong crowd. Counsel asked him, "How do you feel about the way you've handled your probation? I want you to tell the judge you're sorry. How do you feel about the mess you're in right now?" Appellant responded that he felt bad and could only blame himself for using drugs and hanging with the wrong people.

In closing argument, counsel pointed out appellant's "struggles with addiction [that] have caused him to do things that he knows he shouldn't do." He argued that the offenses appellant committed are "classic, you know, addiction kinds of cases." Counsel asked the court to consider a drug relapse program and, if not that, then to assess "a low number of years [because] it's agg time." He argued that "the only person [appellant] hurt really, really was himself. Please either give him the relapse, shock, or at least a low number of years."

During his testimony, appellant had an opportunity to talk to the court about any matters he thought were relevant to sentencing; he offered evidence in mitigation of punishment; and his counsel pleaded for mercy on appellant's behalf. Consequently, even if the issue had been preserved for our review, appellant has not shown that the trial court did not provide him an opportunity to allocute. *See Jarvis v. State*, 353 S.W.3d 253, 255 (Tex. App.—Fort Worth 2011, pet. ref'd). We resolve issue two against appellant.

Issue Three

In issue three, appellant argues that the trial court "imposed grossly disproportionate punishments in violation of the Eighth Amendment's prohibition of cruel and unusual punishments." Appellant did not raise this objection below. Consequently, this issue presents nothing for our review. *See Curry v. State*, 910 S.W.2d 490, 497 (Tex. Crim. App. 1995) (claim that punishment was cruel and unusual not preserved for review because appellant did not object in trial court). We resolve issue three against appellant.

Conclusion

We affirm the trial court's judgments.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

EDEN CONSUELO AMAYA, Appellant	On Appeal from the 291st Judicial District Court, Dallas County, Texas
No. 05-16-00309-CR V.	Trial Court Cause No. F-1259498-U.
	Opinion delivered by Justice Lang-Miers.
THE STATE OF TEXAS, Appellee	Justices Myers and Richter participating.

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

Judgment entered this 10th day of January, 2017.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

EDEN CONSUELO AMAYA, Appellant

No. 05-16-00310-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial District Court, Dallas County, Texas
Trial Court Cause No. F-1259499-U.
Opinion delivered by Justice Lang-Miers.
Justices Myers and Richter participating.

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

Judgment entered this 10th day of January, 2017.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

EDEN CONSUELO AMAYA, Appellant

No. 05-16-00311-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial District Court, Dallas County, Texas
Trial Court Cause No. F-1340582-U.
Opinion delivered by Justice Lang-Miers.
Justices Myers and Richter participating.

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

Judgment entered this 10th day of January, 2017.