

**AFFIRM; and Opinion Filed October 12, 2018.**



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

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**No. 05-18-00569-CR**

**No. 05-18-00570-CR**

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**CURTIS LYNN JOLLY, Appellant  
V.  
THE STATE OF TEXAS, Appellee**

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**On Appeal from the 59th Judicial District Court  
Grayson County, Texas  
Trial Court Cause Nos. 068168 & 068348**

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**MEMORANDUM OPINION**

Before Justices Myers, Evans, and Brown  
Opinion by Justice Brown

In this appeal, Curtis Lynn Jolly contends the trial court abused its discretion by not allowing him to present closing argument at the hearing on the State's motions to revoke his community supervision. Because appellant did not preserve this complaint for appellate review, we affirm the judgments revoking his community supervision.

In July 2017, appellant pleaded guilty to one count of first-degree felony arson and three counts of second-degree felony arson. In accordance with a plea bargain agreement, the trial court assessed appellant's punishment in each case at ten years' confinement, suspended the sentences, and placed appellant on community supervision for six years. In February 2018, the State moved to revoke appellant's community supervision. The State alleged appellant violated the terms and

conditions of community supervision by failing to seek continued counseling and possessing accelerants in his dwelling.

At the revocation hearing, appellant pleaded not true to the allegations in the motions to revoke. Three witnesses testified. At the conclusion of the testimony, the following occurred:

[Prosecutor]: State rests.

[Defense Counsel]: Rest, subject to final argument, Judge.

[Prosecutor]: Close.

[Defense Counsel]: Close, subject to final.

THE COURT: Based upon the evidence presented then, the Court's going to find that the evidence is sufficient to establish that the defendant violated the terms and conditions of his probation as set forth in the motions. Based upon that finding, I will revoke Mr. Jolly's probation and will assess his punishment at 10 years TDC.

The proceeding ended immediately following the judge's pronouncement of sentence.

In a single issue, appellant contends the trial court abused its discretion in denying his attorney the right to make a closing argument. Defense counsel is entitled to make a closing argument at a revocation hearing. *See Ruedas v. State*, 586 S.W.2d 520, 523–24 (Tex. Crim. App. [Panel Op.] 1979). A trial court abuses its discretion by refusing to allow closing argument on the question of whether community supervision should be revoked. *See id.* at 524; *Foster v. State*, 80 S.W.3d 639, 640 (Tex. App.—Houston [1st Dist.] 2002, no pet.). In order to preserve such a complaint for appellate review, however, a defendant must not only notify the trial court of his desire to make a closing argument, the court must refuse that opportunity and then the defendant must make a timely objection to the court's ruling. *See TEX. R. APP. P. 33.1(a)*; *Foster*, 80 S.W.3d at 640. Here, even if defense counsel's comments that he rested and closed "subject to final argument" could be considered an express request for closing argument, appellant did not object to the fact that the trial court proceeded to sentence him without hearing closing arguments. As such, this complaint is not preserved for our review. *See Habib v. State*, 431 S.W.3d 737, 741

(Tex. App.—Amarillo 2014, pet. ref’d) (trial court impliedly denied defendant’s “equivocal request” for closing argument, but defendant did not object to implied ruling and failed to preserve error). Appellant attempts to distinguish his case from *Habib* by arguing that, unlike that case, his request for closing argument was unequivocal. Appellant ignores the fact that, like *Habib*, he did not object to the court’s failure to allow closing argument. We overrule appellant’s sole issue.

We affirm the trial court’s judgments.

/Ada Brown/  
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ADA BROWN  
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**

CURTIS LYNN JOLLY, Appellant

No. 05-18-00569-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 59th Judicial District  
Court, Grayson County, Texas

Trial Court Cause No. 068168.

Opinion delivered by Justice Brown,  
Justices Myers and Evans participating.

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

Judgment entered this 12th day of October, 2018.



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

**JUDGMENT**

CURTIS LYNN JOLLY, Appellant

No. 05-18-00570-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 59th Judicial District  
Court, Grayson County, Texas

Trial Court Cause No. 068348.

Opinion delivered by Justice Brown,

Justices Myers and Evans participating.

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

Judgment entered this 12th day of October, 2018.