AFFIRMED and Opinion Filed June 18, 2019

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00563-CR

NIRAJ KRISHNA, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 401st Judicial District Court
Collin County, Texas
Trial Court Cause No. 401-81619-2017

MEMORANDUM OPINION

Before Justices Bridges, Brown, and Nowell
Opinion by Justice Bridges

Appellant Niraj Krishna pleaded guilty to assault family violence by impeding breath.[1] Pursuant to a negotiated plea agreement, the trial court deferred adjudication of guilt and placed Krishna on two years' deferred adjudication probation. The State subsequently filed a motion to adjudicate guilt, which the trial court granted. The trial court adjudicated Krishna guilty and sentenced him to two years' confinement.

Krishna argues the trial court abused its discretion by revoking his deferred adjudication and adjudicating him guilty of assault family violence. He further contends the case should be remanded for a hearing to determine punishment.

[1] The true bill of indictment stated that on or about March 27, 2017, he caused bodily injury to a family member by "intentionally, knowingly, and recklessly impeding the normal breathing and circulation of the blood of [family member] by applying pressure to the throat and neck of [family member.]"

The facts of the case are well-known to the parties; therefore, we issue this memorandum opinion and include only those facts necessary for disposition of the appeal. *See* TEX. R. APP. P. 47.4. We affirm.

Adjudication of Guilty

In his first issue, Krishna argues the trial court abused its discretion by revoking his deferred adjudication and adjudicating him guilty of assault family violence. The State responds the trial court did not abuse its discretion in granting its motion to revoke probation and adjudicate guilt because it presented evidence of at least one violation of Krishna's probation.

We review a trial court's order revoking probation for an abuse of discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). In determining questions regarding sufficiency of the evidence in probation revocation cases, the burden of proof is by a preponderance of the evidence. *Id*. A preponderance of the evidence means the "greater weight of the credible evidence which would create a reasonable belief that the defendant has violated a condition of his probation." *Id*. (quoting *Scamardo v. State*, 517 S.W.2d 293, 298 (Tex. Crim. App. 1974)). Proof of a single violation of community supervision is sufficient to support a trial court's decision to revoke community supervision. *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012).

In its amended motion to adjudicate guilt, the State alleged seven violations of the terms and conditions of Krishna's probation: (1) On or about November 12, 2017, in Collin County, Texas, he committed harassment; (2) On or about February 4, 2018, in Miller County, Arkansas, he engaged in disorderly conduct; (3) he failed to pay the $300 assessed fine in thirty days; (4) failed to participate in and successfully complete a Battering Intervention program; (5) failed to perform sixty hours of community service at the rate of ten hours per month; (6) failed to submit

to a substance abuse evaluation, specifically an Alcohol Awareness Class; and (7) failed to pay $286 in court costs.

Krishna pleaded not true to the allegations. The trial court found the State proved all of the allegations except (2) engaging in disorderly conduct.

Krishna contends he did not commit a new offense as described in (1) because the text messages he sent his step-son were not intended to harass, annoy, alarm, torment, or embarrass. He further argues there was no evidence he violated any other terms of his community supervision because (1) the probation record was not entered into evidence; (2) the probation officer's testimony was hearsay; (3) there was no evidence he received or understood the terms and conditions of his probation; and (4) the State failed to show he intentionally and willfully failed to timely pay costs and fees.

During the revocation hearing, defense counsel admitted Krishna was in violation of the community service requirement, "but he has begun the work on it." Kayla Loftis, a probation officer, testified Krishna failed to participate in and complete a Battering Intervention program within ninety days. To the extent Krishna argues Loftis's testimony is impermissible hearsay and should not be considered, he failed to object to her testimony. Such evidence admitted without objection is not denied probative value merely because it is hearsay. *See Chambers v. State*, 711 S.W.2d 240, 247 (Tex. Crim. App. 1986); *Massey v. State*, No. 05-15-00995-CV, 2016 WL 3144244, at *2 (Tex. App.—Dallas June 6, 2016, no pet.) (mem. op., not designated for publication); *Few v. State*, No. 01-01-00678-CV, 2002 WL 1869600, at *3 (Tex. App.—Houston [1st Dist.] Aug. 15, 2002, no pet.) (not designated for publication) (court considered probation officer's alleged hearsay testimony admitted without objection at adjudication hearing). Regardless, Krishna testified and admitted he had not started the Battering Intervention program. Accordingly, the trial court heard evidence supporting at least one violation of his probation by a

preponderance of the evidence. *See Garcia*, 387 S.W.3d at 26 (proof of a single violation of community supervision is sufficient to support a trial court's decision to revoke community supervision).

In reaching this conclusion, we reject Krishna's claim that there was no evidence he received or understood the terms and conditions of his probation. Loftis testified Krishna was informed of the conditions of community supervision when placed on probation. Moreover, the Clerk's Record contains the Order Suspending Imposition of Sentence and Placing Defendant on Community Supervision with Krishna's signature. The order specifically lists the terms and conditions to which he must comply.

The trial court did not abuse its discretion in revoking Krishna's community supervision. We overrule his first issue.

Sentencing Hearing

In his second issue, Krishna argues the trial court denied him the opportunity to present mitigating evidence during a punishment hearing prior to imposing his sentence. The State responds his issue is not preserved for review. We agree.

Following an adjudication of guilt, a defendant is entitled to a punishment hearing, and the trial judge must allow the defendant an opportunity to present evidence. *Brumsey v. State*, No. 05-17-00097-CR, 2018 WL 459779, at *2 (Tex. App.—Dallas Jan. 18, 2018, no pet.) (mem. op., not designated for publication) (citing *Vidaurri v. State*, 49 S.W.3d 880, 885 (Tex. Crim. App. 2001)). This right, however, is a statutory right that can be waived if not properly requested. *Brumsey*, 2018 WL 459779, at *2; *Vidaurri*, 49 S.W.3d at 885.

Krishna did not object to the lack of a separate punishment hearing at the time the trial court adjudicated his guilt. TEX. R. APP. P. 33.1. Rather, when the trial judge asked if there was any reason in law not to impose sentence, defense counsel answered, "I think the State has just not

proven their case." Therefore, he has not preserved his complaint for review. We overrule his second issue.

Conclusion

The judgment of the trial court is affirmed.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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Court of Appeals
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JUDGMENT

NIRAJ KRISHNA, Appellant	On Appeal from the 401st Judicial District Court, Collin County, Texas
No. 05-18-00563-CR V.	Trial Court Cause No. 401-81619-2017.
	Opinion delivered by Justice Bridges.
THE STATE OF TEXAS, Appellee	Justices Brown and Nowell participating.

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

Judgment entered June 18, 2019