Opinion issued February 17, 2011

In The

Court of Appeals

For The

First District of Texas

NO. 01-09-00676-CR

WILLIAM EARL FERRIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 56th District Court
Galveston County, Texas
Trial Court Case No. 08CR1520

MEMORANDUM OPINION

Appellant, William Earl Ferris, pleaded guilty to the felony offense of aggravated assault.[1] The trial court deferred adjudication of guilt and placed

---

[1] TEX. PENAL CODE ANN. § 22.02(a)(2) (Vernon Supp. 2010).

appellant on six years' community supervision. The State subsequently moved to adjudicate guilt, alleging that appellant had committed eight distinct violations of the terms and conditions of his community supervision. Appellant pleaded true to the allegation that he failed to complete his required community service hours. After the trial court found four of the allegations true, it revoked appellant's community supervision and assessed punishment at five years' confinement. In two issues, appellant contends that the trial court erred in (1) admitting appellant's entire probation file as a business record and (2) revoking appellant's community supervision because the State failed to present sufficient evidence that appellant committed the offenses of assault and wrongful possession of another's identifying information while on community supervision.

We affirm.

Background

In May 2008, the State charged appellant with the felony offense of aggravated assault with a deadly weapon. Pursuant to a plea agreement, appellant pleaded guilty, and the trial court deferred adjudication of guilt and placed appellant on community supervision for six years. The State subsequently moved to adjudicate guilt and to revoke appellant's community supervision, alleging that he had violated the conditions of his community supervision by (1) committing two thefts, (2) assaulting his girlfriend, (3) wrongfully possessing another's

identifying information, (4) failing to report subsequent arrests to his probation supervisor within forty-eight hours, (5) failing to perform the required community service hours at a rate of sixteen hours per month, (6) failing to make an appointment for a "psychological abuse assessment evaluation," and (7) failing to enroll in a domestic violence or anger control program.

At the revocation hearing, appellant pleaded "not true" to five of the alleged violations. Appellant pleaded true to the allegation that he had failed to perform his required community service hours at the rate of at least sixteen hours per month.[2] During the direct-examination of Joseph Eaglin, appellant's probation supervisor, the State offered appellant's entire probation file. Defense counsel objected to the admission of this file on the ground that, although the State had proved that the file qualified as a business record, the file "contain[ed] hearsay and other matters that are questionable as far as being validated." The trial court admitted the file as a business record, but instructed defense counsel to object if she noticed a particular document in the file that was subject to a hearsay objection. Eaglin testified regarding appellant's failure to report his subsequent arrests within forty-eight hours and his failure to perform community service at the required rate. Defense counsel did not object to this testimony, or to any other

[2] After appellant pleaded true to the community service allegation, the State abandoned the final two allegations: failure to make an appointment for a psychological abuse evaluation and failure to enroll in a domestic violence or anger control program.

testimony relating to appellant's alleged violations. In closing argument, defense counsel acknowledged that appellant had failed to complete his community service hours and she conceded that he "violated his probation."

The trial court found that appellant had violated four conditions of his community supervision: (1) appellant committed assault, (2) appellant wrongfully possessed another's identifying information, (3) appellant failed to report his arrests within forty-eight hours, and (4) appellant failed to complete his required community service hours. The trial court revoked appellant's community supervision and assessed punishment at five years' confinement.

Standard of Review

A community supervision revocation proceeding is neither criminal nor civil in nature—rather, it is an administrative proceeding. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993); *Canseco v. State*, 199 S.W.3d 437, 438 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd). At a revocation hearing, the State must prove by a preponderance of the evidence that the defendant has violated a condition of his community supervision. *Rickels v. State*, 202 S.W.3d 759, 763–64 (Tex. Crim. App. 2006) (quoting *Scamardo v. State*, 517 S.W.2d 293, 298 (Tex. Crim. App. 1974)); *Canseco*, 199 S.W.3d at 438. Our review of an order adjudicating guilt and revoking community supervision is limited to determining whether the trial court abused its discretion in ruling that the defendant violated the

terms of his community supervision. *Rickels*, 202 S.W.3d at 763 (quoting *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984)); *Duncan v. State*, 321 S.W.3d 53, 56–57 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd). We examine the evidence in the light most favorable to the trial court's order. *Duncan*, 321 S.W.3d at 57; *Canseco*, 199 S.W.3d at 439.

A finding of a single violation of the terms of community supervision is sufficient to support revocation. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980) ("We need not address appellant's other contentions since one sufficient ground for revocation will support the court's order to revoke probation."); *Joseph v. State*, 3 S.W.3d 627, 640 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (citing *Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. 1980)). Thus, in order to prevail on appeal, the defendant must successfully challenge all of the findings that support the revocation order. *Joseph*, 3 S.W.3d at 640; *Baxter v. State*, 936 S.W.2d 469, 472 (Tex. App.—Fort Worth 1996, pet. dism'd) (holding that because appellant did not challenge second ground for revocation, sufficient evidence supported revocation). A plea of true to an allegation that the defendant violated a condition of community supervision is, standing alone, sufficient to support the revocation. *Cole v. State*, 578 S.W.2d 127, 128 (Tex. Crim. App. 1979); *see also Moses v. State*, 590 S.W.2d 469, 470 (Tex.

Crim. App. 1979) ("Appellant's plea of true, standing alone is sufficient to support the revocation of probation.").

Admission of Probation File

In his first issue, appellant contends that the trial court erred in admitting his entire probation file because the State did not establish the predicate for the admission of "negative evidence" in a business record. Appellant contends that because the probation file and the authenticating officer's testimony regarding its contents is the "only evidence offered to support the Appellant's alleged non-compliance" with the community supervision conditions requiring appellant to report all arrests within forty-eight hours and to complete 240 hours of community service at the rate of sixteen hours per month, we should vacate the trial court's finding that appellant violated these two conditions.

We review a trial court's decision to admit evidence for an abuse of discretion. *Zuliani v. State*, 97 S.W.3d 589, 595 (Tex. Crim. App. 2003). A trial court abuses its discretion only if its decision is "so clearly wrong as to lie outside the zone within which reasonable people might disagree." *Taylor v. State*, 268 S.W.3d 571, 579 (Tex. Crim. App. 2008); *Roberts v. State*, 29 S.W.3d 596, 600 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd). A trial court does not abuse its discretion if any evidence supports its decision. *See Osbourn v. State*, 92 S.W.3d 531, 538 (Tex. Crim. App. 2002). If the trial court's decision is correct on any

theory of law applicable to the case, we will uphold the decision. *De La Paz v. State*, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009).

Hearsay is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted. TEX. R. EVID. 801(d). Generally, hearsay is inadmissible unless a statute or the Rules of Evidence provide otherwise. TEX. R. EVID. 802. When the proper predicate is laid, a probation file is admissible under the business records exception to the hearsay rule. TEX. R. EVID. 803(6); *Canseco*, 199 S.W.3d at 440; *see also Greer v. State*, 999 S.W.2d 484, 489 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd) (holding probation file including notation that defendant failed to report to probation officer is admissible under Rule 803(8)(B) as public record). A party may also offer, as an additional exception to the hearsay rule, evidence that information is not included in a business record "to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved." TEX. R. EVID. 803(7).

Here, appellant's probation file contained the "office visit report forms" from appellant's visits to his probation officer. These forms included a question asking whether appellant had been arrested since his last visit and contained a record of appellant's remaining community service hours and the date that he had

last performed community service. The form for August 29, 2008, for example, reflected that, since the last meeting, appellant had been arrested for felony theft. The forms for August 29, September 29, October 29, and November 29, 2008, all reflected that appellant had 224 hours of community service remaining, and that the last date that he had performed community service was July 27, 2008.

During the testimony of Joseph Eaglin, appellant's probation supervisor, the State offered the probation file as an exhibit. Defense counsel objected on hearsay grounds and had the following exchange with the trial court:

> [Appellant]: Defendant objects. Although [the State has] proved up the business record, this file contains hearsay and other matters that are questionable as far as being validated and those kind of issues. And the Defendant objects.
>
> The Court: . . . [C]an you narrow some of that down? Like give me an example where maybe we admit in part and not in other parts?
>
> [Appellant]: Yes, Your Honor. There [are] documents in this file, for example, documents signed by other folks with comments listed on the page. Ms. McCoy signs some things.
>
> The Court: She's a probation officer. So, that's part of business.
>
> [Appellant]: I'm not objecting to business records. I'm saying the Defendant objects to some hearsay, Your Honor.
>
> The Court: Okay. I'm going to admit it. If you see the use of it where it's clear there is a hearsay objection, then let me know on that.

Eaglin then testified without further defense objection regarding various conditions of appellant's community supervision and stated that appellant failed to notify him

of subsequent arrests within forty-eight hours of the arrests and failed to complete his community service requirements. Eaglin stated that, although the conditions required appellant to perform community service at the rate of sixteen hours per month, he performed sixteen hours in July 2008, but he had not performed any community service since that time. Defense counsel did not object to any of this testimony, nor did she make any specific objections to the contents of the probation file.

On appeal, appellant contends that the State never established the necessary predicate for admitting the "negative evidence" in the business record under Rule 803(7). Appellant did not object on this basis at trial. To preserve error for appellate review, the party must make a timely request, objection, or motion to the trial court that "state[s] the grounds for the ruling . . . sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context." TEX. R. APP. P. 33.1(a)(1)(A). An appellant fails to preserve error when the trial objection does not comport with the issue raised on appeal. *See Swain v. State*, 181 S.W.3d 359, 367 (Tex. Crim. App. 2005). Because appellant failed to make his insufficient predicate argument to the trial court, he has not preserved the issue for our review. Furthermore, when the trial court is presented with a proffer of evidence that contains both admissible and inadmissible evidence, the trial court, in the absence of a specific objection to

the allegedly inadmissible evidence, may properly admit the entire proffer. *See Willover v. State*, 70 S.W.3d 841, 847 (Tex. Crim. App. 2002) (quoting *Jones v. State*, 843 S.W.2d 487, 492–93 (Tex. Crim. App. 1992)); *see also* TEX. R. EVID. 105(a) (stating that, when evidence is admissible for one purpose but not another and party does not request instruction limiting consideration of evidence to only admissible purpose, failure to give such instruction is not grounds for complaint on appeal).

We overrule appellant's first issue.[3]

Evidence of Violation of Community Supervision Conditions

In his second issue, appellant contends that the trial court erroneously revoked his community supervision because the State failed to present sufficient evidence that appellant committed assault and wrongfully possessed another's identifying information.

Regardless of whether the State produced sufficient evidence that appellant committed assault and wrongfully possessed another's identifying information

[3] We further note that, even if the trial court erred in admitting the entire probation file, the improper admission of evidence does not constitute reversible error if the same facts are shown by other evidence which is not challenged. *Leday v. State*, 983 S.W.2d 713, 717 (Tex. Crim. App. 1998) (quoting *Crocker v. State*, 573 S.W.2d 190, 201 (Tex. Crim. App. 1978)). Not only did Joseph Eaglin testify regarding appellant's failure to report his subsequent arrests within forty-eight hours and failure to perform his required community service hours without objection from appellant, appellant pleaded true to the State's allegation that he failed to satisfy his community service requirement.

while on community supervision, it is undisputed that appellant pleaded true to the State's allegation that he failed to complete his required community service hours. Furthermore, during closing arguments at the revocation hearing, defense counsel acknowledged appellant's failure to comply with the terms of his community supervision by stating that:

> [Appellant] said to this Court I didn't do my community service. He was very truthful in that part. . . . He did violate his probation. He admitted that to you, Your Honor.

Appellant does not challenge his plea of true to this condition on appeal, nor does he contend that this plea was involuntary.

A single violation of a community supervision condition is sufficient to support revocation. *Moore*, 605 S.W.2d at 926; *Joseph*, 3 S.W.3d at 640. A plea of true to an allegation that the defendant violated a condition of community supervision, standing alone, is also sufficient to support revocation. *Cole*, 578 S.W.2d at 128. Because appellant pleaded true to the allegation that he failed to complete his community service requirements, and this plea is sufficient to support the trial court's revocation order, we need not address appellant's contention that the State failed to present sufficient evidence of two subsequent offenses allegedly committed while on community supervision. *See Moore*, 605 S.W.2d at 926 ("We need not address appellant's other contentions since one sufficient ground for revocation will support the court's order to revoke probation."). We therefore hold

that the trial court did not abuse its discretion in finding that appellant violated the terms of his community supervision.

We overrule appellant's second issue.

Conclusion

We affirm the judgment of the trial court.

Evelyn V. Keyes
Justice

Panel consists of Justices Keyes, Sharp, and Massengale.

Do not publish. TEX. R. APP. P. 47.2(b).