Opinion issued November 3, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-01092-CR

TAIRON JOSE MONJARAS-GUIROLA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Case No. 1432692

MEMORANDUM OPINION

Appellant, Tairon Jose Monjaras-Guirola, was charged by information with continuous violence against the family.[1] Appellant pleaded guilty, and the trial court placed him on three years of deferred adjudication with community supervision. In

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1 *See* TEX. PENAL CODE ANN. § 25.11(a) (Vernon 2009).

May 2015, the State filed a motion to adjudicate guilt. The court adjudicated Appellant guilty and sentenced him to four years in prison and ordered Appellant to pay a $500 fine. In three issues, Appellant argues that the trial court erred in finding guilt because (1) evidence was insufficient to support a finding of guilt, (2) the court erred in assessing a $500 fine, and (3) the judgment incorrectly reflects that he pleaded "true" to the State's motion.

We modify and affirm.

Background

The trial court placed Appellant on deferred adjudication with community supervision in July 2014. The State filed a motion to adjudicate guilt in May 2015 and an amended motion a month later. The State identified in its motion seven conditions of Appellant's community supervision that it alleged Appellant had violated. One of those conditions was to commit no offenses of law. The State alleged that Appellant violated this condition by committing the offense of evading arrest or detention.

At the hearing on the motion to adjudicate guilt, Appellant pleaded not true to all of the State's allegations. The State presented the testimony of Officer M. Perrill of the Houston Police Department. Officer Perrill testified that he saw Appellant speed and drive through multiple stop signs. He activated the lights and siren on his patrol car and reached a distance of one car-length behind Appellant. Appellant

continued to drive. Other patrol cars with activated lights and sirens joined the pursuit. About four miles later, Appellant finally came to a stop.

Appellant came to a stop at a hospital. There was a passenger in the car, who was taken to the emergency room. Medical records admitted at the hearing showed that the passenger was treated for a urinary tract infection.

At the close of the hearing, the trial court announced that it would "give [Appellant] the benefit of the doubt," that it would find not true the allegation that Appellant had committed a new offense, and that it would find true the remainder of the State's allegations. The trial court orally pronounced a sentence of four years' confinement.

The written findings in the judgment determined that, "[w]hile on community supervision, [Appellant] violated the terms and conditions of community supervision as set out in the State's AMENDED Motion to Adjudicate Guilty as follows: COMMITTING A NEW LAW VIOLATION." It also stated that Appellant had pleaded true to the State's allegations in the motion to adjudicate guilt.

Sufficiency of Adjudication of Guilt

In his first issue, Appellant argues the evidence was insufficient to support a finding of guilt.

A. Standard of Review

The decision to proceed to an adjudication of guilt and revoke deferred adjudication community supervision is reviewable in the same manner as a revocation of ordinary community supervision. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (West Supp. 2013); *Cantu v. State*, 339 S.W.3d 688, 691 (Tex. App.—Fort Worth 2011, no pet.). We review an order revoking community supervision under an abuse of discretion standard. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). In a revocation proceeding, the State must prove by a preponderance of the evidence that the defendant violated at least one of the terms and conditions of community supervision. *Cobb v. State*, 851 S.W.2d 871, 874 (Tex. Crim. App. 1993). The trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony, and we review the evidence in the light most favorable to the trial court's ruling. *Cardona*, 665 S.W.2d at 493; *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981). If the State fails to meet its burden of proof, the trial court abuses its discretion in revoking the community supervision. *Cardona*, 665 S.W.2d at 493–94. We will affirm if there is sufficient proof of one violation. *Marcum v. State*, 983 S.W.2d 762, 767 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd) (recognizing that State only need prove one violation of condition

of probation and that failure of defendant to report to his community supervision officer as instructed on one occasion is sufficient grounds for adjudication of guilt).

B. Analysis

At the close of the hearing on the motion to adjudicate guilt, the trial court announced that it would "give [Appellant] the benefit of the doubt," that it would find not true the allegation that Appellant had committed a new offense and, that it would find true the remainder of the State's allegations. The judgment adjudicating guilt included the trial court's findings of fact and conclusions of law. The written findings, in contrast to the trial court's statements at the hearing, determined that, "[w]hile on community supervision, [Appellant] violated the terms and conditions of community supervision as set out in the State's AMENDED Motion to Adjudicate Guilty as follows: COMMITTING A NEW LAW VIOLATION."

As Appellant correctly argues, the trial court's written findings control over an oral announcement. *See Coffey v. State*, 979 S.W.2d 326, 328 (Tex. Crim. App. 1998) (holding, for *findings* by trial court, written findings control over oral announcement). Accordingly, because the trial court's written findings adjudicated guilt based on Appellant having committed a new law violation and not on any other basis, this finding controls over the trial court's statement in open court to the contrary. *See id.*; *see also Walkovak v. State*, 576 S.W.2d 643, 644–45 (Tex. Crim. App. 1979) (reversing revocation of probation because no evidence supported

ground for revocation listed in judgment even though other grounds not listed would have supported revocation).

Appellant argues that the evidence is insufficient to support the allegation of committing a new offense because the trial court announced at the conclusion of the hearing that it would give him "the benefit of the doubt" on this matter. But this is precisely the statement that Appellant argued, and we agree, was overridden by the trial court's judgment. It does not control over the trial court's written finding that Appellant had committed a new offense. Moreover, the statement by the trial court does not constitute evidence. Accordingly, it cannot establish that the State failed to carry its burden. *See Cobb*, 851 S.W.2d at 873–74 (holding State bears burden of proof by preponderance of evidence).

Appellant does not otherwise attack the sufficiency of the evidence to support the State's allegation that he committed a new offense. The State alleged Appellant committed the offense of evading arrest or detention. "A person commits an offense if he intentionally flees from a person he knows is a peace officer or federal special investigator attempting lawfully to arrest or detain him." TEX. PENAL CODE ANN. § 38.04(a) (Vernon 2013).

Officer Perrill testified that he saw Appellant speed and drive through multiple stop signs. He activated the lights and siren on his patrol car and reached a distance of one car-length behind Appellant. Appellant continued to drive. Other patrol cars

with activated lights and sirens joined the pursuit. About four miles later, Appellant finally came to a stop.

We hold there is sufficient evidence to support the trial court's written finding that Appellant committed a new offense. We overrule Appellant's first issue.

Errors in the Judgment

In his second issue, Appellant argues the judgment erroneously contains a $500 fine against him. In his third issue, he argues that the judgment reflects that he pleaded true to the State's allegations in its motion to adjudicate guilt.

For the fine, the record reflects that the order deferring adjudication assessed a $500 fine against Appellant. During the trial court's oral pronouncement of sentence, however, no mention of a fine was made. When a conflict exists between the oral pronouncement of sentence and the written judgment as to sentencing, the oral pronouncement controls. *See Coffey*, 979 S.W.2d 3at 328 (holding, for pronouncement of *sentence*, oral pronouncement controls over written judgment). "[W]hen guilt is adjudicated, the order adjudicating guilt sets aside the order deferring adjudication, including any previously imposed fines." *Alexander v. State*, 301 S.W.3d 361, 363 (Tex. App.—Fort Worth 2009, no pet.).

The trial court did not orally impose a fine in the defendant's presence. A fine was not required as a part of Appellant's sentence. *See* TEX. PENAL CODE ANN. § 25.11(e) (Vernon 2009) (establishing offense of continuous violence against the

family as a third-degree felony); TEX. PENAL CODE ANN. § 12.34(b) (Vernon 2009) (allowing fine to be assessed in punishment for third-degree felony, but not requiring one). Accordingly, a $500 fine is not a part of Appellant's sentence. *See Coffey*, 979 S.W.2d at 328.

We have the power to modify judgments when the information is available to us. TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993). Accordingly, we modify the judgment to strike the $500 fine and sustain appellant's second point.

For the statement in the judgment that Appellant pleaded true to the State's allegations in the motion to adjudicate guilty, the record reflects that Appellant pleaded not true. Accordingly, we modify the judgment to reflect that Appellant pleaded not true.

We sustain Appellant's second and third issues.

Conclusion

We modify the trial court's judgment to strike the $500 fine and to reflect that Appellant pleaded not true to the State's motion to adjudicate guilt. We affirm the trial court's judgment as modified.

Laura Carter Higley
Justice

Panel consists of Chief Justice Radack and Justices Higley and Huddle.

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