

Affirmed and Memorandum Opinion filed January 11, 2011.



In The

Fourteenth Court of Appeals

NO. 14-09-00642-CR

MILTON ALEXANDER CALLES, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 240th District Court
Fort Bend County, Texas
Trial Court Cause No. 41358**

M E M O R A N D U M O P I N I O N

In a single issue, appellant, Milton Alexander Calles, contends the trial court erred by revoking his probation. Because the dispositive issues are clearly settled in law, we issue this memorandum opinion. *See* Tex. R. App. P. 47.4. We affirm.

I. BACKGROUND

In 2006, appellant was convicted of aggravated kidnapping and sentenced to ten years' imprisonment. Imposition of the sentence was suspended, and appellant was placed on adult probation for ten years. In 2009, the State filed a motion to revoke

appellant's probation. The trial court found the allegations in the motion were true, signed a revocation order, and sentenced appellant to ten years' imprisonment.

II. ANALYSIS

Appellant contends the trial court erred by revoking his probation because the evidence is insufficient to support the trial court's finding that he violated the terms of probation.

A. Standard of Review

Our review of the trial court's order revoking probation is limited to determining whether the trial court abused its discretion. *Caddell v. State*, 605 S.W.2d 275, 277 (Tex. Crim. App. 1980). When a trial court finds several violations of probationary conditions, we affirm the order revoking probation if the proof of any single allegation is sufficient. *See Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980).

Similar to the traditional legal-sufficiency analysis, we view the evidence in the light most favorable to the decision to revoke. *See Hart v. State*, 264 S.W.3d 364, 367 (Tex. App.—Eastland 2008, pet. ref'd). The trial court is the sole trier of the facts, the credibility of the witnesses, and the weight to be given the witnesses' testimony. *Diaz v. State*, 516 S.W.2d 154, 156 (Tex. Crim. App. 1974). The State has the burden to establish by a preponderance of the evidence that the defendant committed a violation of the terms and conditions of community supervision. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). When the State fails to meet its burden, it is an abuse of discretion for the trial court to issue a revocation order. *Id.* at 493–94.

B. Analysis

One condition of appellant's probation was that he “[c]ommit no offense against the laws of this State or of any other state of the United States.” During the revocation hearing, Cecilia Gomez testified that appellant struck her in the eye on November 2,

2008.¹ A police officer testified that, when he spoke with Gomez later that evening, her eye was swollen shut and she stated appellant had struck her in the eye. Appellant also admitted at the hearing that he struck Gomez in the eye. This testimony supports by a preponderance of the evidence the trial court's finding that appellant violated a condition of his probation by assaulting Gomez. *See* Tex. Penal Code Ann. § 22.01(a)(1) (West Supp. 2009) (defining crime of assault). Accordingly, we conclude that the trial court did not abuse its discretion by revoking appellant's probation and sentencing him.

We overrule appellant's sole issue and affirm the trial court's judgment.

/s/ Charles W. Seymore
Justice

Panel consists of Justices Seymore, Boyce, and Christopher.

Do Not Publish — Tex. R. App. P. 47.2(b).

¹ Appellant argues that certain evidence rendered Gomez's testimony untrustworthy. However, the trial court was the sole judge of Gomez's credibility. *See Diaz*, 516 S.W.2d at 156. Therefore, we must defer to the trial court's implied finding that Gomez was credible.