

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-07-00572-CR

MARCUS FRANK KELLER, Appellant

V.

THE STATE OF TEXAS, Appellees

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 99946

MEMORANDUM OPINION

Pursuant to a plea bargain agreement, Marcus Frank Keller pled guilty to aggravated robbery. *See* TEX. PEN. CODE ANN. § 29.03(a)(2) (Vernon 2003). The trial court concluded the evidence was sufficient to find Keller guilty of aggravated robbery, but deferred adjudication of guilt. The court placed Keller on community supervision for ten years and assessed a \$1500 fine.

The State filed a motion to revoke asserting that Keller violated four conditions of his

community supervision. The trial court held a hearing on the motion. The State abandoned its first count. Keller pled “not true” to the remaining three alleged violations. The trial court found that Keller violated three conditions of his community supervision, revoked his community supervision, found him guilty of aggravated robbery, and assessed punishment at seventy-seven years of confinement in the Texas Department of Justice, Institutional Division.

Keller argues in his first two issues that the trial court abused its discretion in revoking his community supervision without sufficient evidence that he failed to provide verification of performing community service hours and of completing an anger management program. In his third issue, he contends the trial court abused its discretion in revoking his community supervision without sufficient evidence that he failed to pay court-assessed fees of \$270 by October 10, 2007.

We review the trial court’s judgment revoking community supervision under an abuse of discretion standard. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). In considering the trial court’s decision, an appellate court reviews the record to determine whether the State met its burden of proof. *See Cardona v. State*, 665 S.W.2d 492, 493-94 (Tex. Crim. App. 1984). Proof by a preponderance of the evidence of any one of the alleged violations of the conditions of supervision is sufficient to support a revocation order. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980). In revocation proceedings, the trial

judge is the sole trier of the facts, the credibility of the witnesses, and the weight to be given to the testimony. *Taylor v. State*, 604 S.W.2d 175, 179 (Tex. Crim. App. 1980); *Ross v. State*, 523 S.W.2d 402, 403 (Tex. Crim. App. 1975).

We consider issue three, as it is dispositive of the appeal. When the State alleges the defendant violated his community supervision conditions by failing to pay court costs or community supervision fees, “the [S]tate must prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge.” TEX. CODE CRIM. PROC. ANN. art. 42.12, § 21(c) (Vernon Supp. 2008).¹ One of the conditions of Keller’s community supervision was that he pay a \$1500 fine, supervision fees of \$60 per month, \$200 in court costs, a PSI fee of \$350, \$1000 in attorney’s fees, and a \$50 crime stoppers fee, all to be paid in a monthly amount of \$90. His probation officer testified that as of October 10, 2007, Keller was \$270 in arrears. Keller testified that he had been working while on probation, and that he would have paid the \$270 on October 10, 2007, the date he was to

¹The statute in effect at the time of the hearing places the burden on the State to show the defendant was able to pay and did not pay “[i]n a community supervision revocation hearing at which it is alleged only that the defendant violated the conditions of community supervision by failing to pay compensation paid to appointed counsel, community supervision fees, or court costs[.]” TEX. CODE CRIM. PROC. ANN. art. 42.12 § 21(c) (Vernon Supp. 2008); *cf.* Act of May 30, 1977, 65th Leg., R.S., ch. 342, § 2, sec. (c), 1977 Tex. Gen. Laws 909 (amended 2007). The Court of Criminal Appeals has held that the use of the word “only” does not limit application of the section to instances in which the State makes solely monetary allegations. *Stanfield v. State*, 718 S.W.2d 734, 736-37 (Tex. Crim. App. 1986).

report to his probation officer, had he not been arrested and taken into custody on October 9, 2007, for another offense.

There is no dispute that Keller's court-assessed costs were months in arrears. There is also no dispute that as of October 10, 2007, he had not paid the \$270. The State proved Keller was able to pay the fees and was in arrears. *See id.* The trial court was not required to accept his assurance that he would have paid the past-due fees if he had not been arrested. On this record, the trial court did not abuse its discretion in revoking Keller's community supervision. We overrule appellant's third issue.

Keller's first two issues do not address his failure to pay court-assessed fees. Proof of a single alleged violation of a condition of community supervision is sufficient to support revocation. *See Moore*, 605 S.W.2d at 926. We affirm the trial court's judgment revoking appellant's community supervision.

AFFIRMED.

DAVID GAULTNEY
Justice

Submitted on April 7, 2009
Opinion Delivered April 15, 2009
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.