

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00500-CR

JOHNNY RAY MARTIN, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 07-02207**

MEMORANDUM OPINION

Appellant, Johnny Ray Martin, was charged by indictment with the offense of unlawfully carrying a weapon on a licensed premise, a third degree felony. Appellant entered a plea of guilty to the offense. The trial court accepted appellant's plea of guilty to the charged offense, found sufficient evidence to substantiate appellant's guilt, but withheld an adjudication of guilt and placed appellant on community supervision for a period of five years and assessed a fine of \$500.

As a term of his community supervision, appellant was required to serve time in a substance abuse felony punishment facility (SAFPF). Appellant successfully completed a SAFPf program in which appellant was incarcerated from April 18, 2008 to January 27, 2009.

The State later filed a motion to revoke his unadjudicated probation. During the revocation hearing, appellant pled “true” to one violation of the terms of his community supervision. Appellant requested credit against any sentence for his SAFPf confinement time. The trial court adjudicated appellant’s guilt, revoked his community supervision and assessed punishment at ten years confinement. The trial court noted that appellant would receive credit for all time served to which he is entitled by law; however, the trial court’s judgment does not reflect credit for appellant’s time served in the SAFPf.

In his sole issue for review, appellant contends the trial court erred in not expressly providing appellant credit for time served during his SAFPf confinement, and asks this Court to reform the judgment to reflect credit for time served in the program. Generally, a trial court does not consider the time that the defendant served on community supervision as part of the time that the trial court shall sentence the defendant to serve, except on revocation:

the judge shall credit to the defendant time served by the defendant as a condition of community supervision in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or another court-ordered residential program or facility, but only if the defendant successfully completes the treatment program in that facility.

Tex. Code Crim. Proc. Ann. art. 42.12, § 23(b) (West Supp. 2010).¹ As part of appellant’s community supervision, he was required to serve time in a SAFPF. Here, there is no dispute that appellant successfully completed a SAFPF program, during which he was incarcerated from April 18, 2008 to January 27, 2009. Rule 43.2(b) of the Texas Rules of Appellate Procedure authorizes the court of appeals to “modify the trial court’s judgment and affirm it as modified[.]” Tex. R. App. P. 43.2(b). We affirm the judgment of the trial court as to appellant’s conviction for the offense of unlawfully carrying a weapon on a licensed premise, but modify said judgment to credit appellant for time served during his incarceration for the period of days from April 18, 2008 to January 27, 2009, in the SAFPF. *See* Tex. Code Crim. Proc. Ann. art. 42.12, § 23(b); Tex. R. App. P. 43.2(b).

AFFIRMED AS MODIFIED.

CHARLES KREGER
Justice

Submitted on May 27, 2011
Opinion Delivered June 15, 2011
Do not publish

Before McKeithen, C.J., Gaultney and Kreger, JJ.

¹ We cite to the current version of this statute because subsequent amendments do not materially alter the cited portion.