

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00578-CR

JAMES DIXSON, JR. a/k/a JAMES DIXON, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 10-08799

MEMORANDUM OPINION

Based on a plea bargain agreement, James Dixon, Jr. a/k/a James Dixon, Jr. pled guilty to possession of a controlled substance. The trial court found the evidence sufficient to find Dixon guilty, but deferred further proceedings, placed Dixon on community supervision for three years, and assessed a fine of \$500. The State subsequently filed a motion to revoke Dixon's unadjudicated community supervision. Dixon pled "true" to violating two of the conditions the trial court established in its community supervision order. The trial court found Dixon violated the conditions of its

order and found Dixson guilty on the charge of possession of a controlled substance. Then, the trial court sentenced Dixson to fourteen months of confinement in a state jail facility.

On appeal, Dixson argues that the judge presiding over his revocation hearing was “unauthorized” to revoke the community supervision, and he argues the trial court’s order to revoke is void. Dixson also complains that because he is indigent, he should not have been ordered to pay attorney’s fees. We modify the trial court’s judgment to delete the award of attorney’s fees, and affirm the judgment as modified.

Background

When the State filed Dixson’s case it was assigned to the Criminal District Court of Jefferson County. In April 2010, Judge Larry Gist¹ signed an order deferring Dixson’s guilt and placed him on community supervision. Approximately three weeks later, Judge Gist signed an order amending the community supervision order.

In September 2010, the State filed a motion requesting that the trial court revoke Dixson’s community supervision. On November 15, 2010, Judge Layne Walker² heard the State’s motion to revoke although he is not the judge elected to preside in the Criminal District Court. The initial reporter’s record of the revocation hearing filed in our

¹Judge John Stevens is the elected judge of the Criminal District Court of Jefferson County, Texas and Judge Larry Gist, by assignment of Judge Stevens, presides over a portion of the Criminal District Court’s drug-related docket. In Dixson’s case, Judge Gist was the presiding judge.

²Judge Layne Walker was elected and generally presides over the proceedings of the 252nd District Court of Jefferson County, Texas.

Court created some ambiguity concerning where the revocation proceedings occurred. While the style of the reporter's record reflects that the hearing took place in the Criminal District Court, the reporter's note indicates that the proceedings were "held in the 252nd District Court in Beaumont, Jefferson County, Texas." This Court abated Dixson's appeal and remanded the case for a hearing to clarify the record. Judge John Stevens, the presiding judge of the Criminal District Court, after conducting a hearing found that, with respect to the revocation hearing, Judge Walker "sat as a Judge by permission and agreement with the Criminal District Court" and therefore, "was acting as the Judge of the Criminal District Court for that particular proceeding in this particular case." A supplemental reporter's record has also been filed to indicate that Judge Walker presided over the revocation hearing and that it was "held in the Criminal District Court in Beaumont, Jefferson County, Texas."

At the conclusion of the November 2010 revocation hearing, Judge Walker found the evidence sufficient to support a finding that Dixson had violated the terms of the trial court's community supervision order, revoked Dixson's unadjudicated community supervision, found Dixson guilty of possessing a controlled substance, and sentenced Dixson to fourteen months in a state jail. In December, 2010, Judge Gist signed a judgment adjudicating guilt, and that judgment, which requires Dixson to serve fourteen months in a state jail, is consistent with Judge Walker's oral pronouncement of Dixson's sentence.

Applicable Law and Analysis

Whether a trial court has jurisdiction over a case is a threshold question. *See State v. Roberts*, 940 S.W.2d 655, 657 & n.2 (Tex. Crim. App. 1996), *overruled on other grounds by State v. Medrano*, 67 S.W.3d 892, 903 (Tex. Crim. App. 2002). Relying on Article 42.12, section 10(a) of the Texas Code of Criminal Procedure, Dixon contends the judgment revoking his community supervision is “void as [his] community supervision was revoked by a court other than the originating court [that] tried [him][.]” Article 42.12, section 10(a) provides that “[o]nly the court in which the defendant was tried may grant community supervision, impose conditions, revoke the community supervision, or discharge the defendant, unless the judge has transferred jurisdiction of the case to another court with the latter’s consent.” Tex. Code Crim. Proc. Ann. art. 42.12 § 10(a) (West Supp. 2010).

In Dixon’s case, the record reflects that Dixon was tried in the Criminal District Court. Judge Walker is the elected judge who presides over the 252nd Judicial District Court. In a county like Jefferson County which has multiple district courts, a judge presiding in one court may exchange benches and preside over cases in other district courts in that county. *See* Tex. Gov’t Code Ann. § 24.303(a) (West 2004) (explaining that district judges in multi-court counties “may, in their discretion, exchange benches or districts from time to time”); *Davila v. State*, 651 S.W.2d 797, 799 (Tex. Crim. App.

1983). No formal order is necessary for the judge of one district court to preside over a case in place of a duly elected judge. *Davila*, 651 S.W.2d at 799.

In this case, the styles of all of the pleadings as well as the style on the supplemental reporter's record of the revocation hearing are consistent with the State's claim that all proceedings were conducted in the Criminal District Court. Section 24.303(a) of the Texas Government Code authorized Judge Walker to act as the judge presiding over the Criminal District Court. Acting in this case as the presiding judge of the Criminal District Court, Judge Walker was authorized to conduct the hearing on the State's motion to revoke and to adjudicate Dixson's guilt. *See* Tex. Gov't Code Ann. § 24.303(a). We conclude that the community supervision order was revoked by a judge presiding there by an exchange of benches, and that Judge Walker had jurisdiction to act over Dixson's case. We overrule Dixson's second issue.

Taxing Fees of Court-Appointed Counsel

In issue one, Dixson asserts that no evidence supports the trial court's decision to assess him with \$1,000 in attorney's fees. Under the Texas Code of Criminal Procedure, an indigent defendant may be taxed with attorney's fees if there is a material change in the indigent defendant's ability to pay attorney's fees between the date the trial court initially appointed trial counsel and the date the trial court rendered its final judgment. *See* Tex. Code Crim. Proc. Ann. arts. 26.04(p), 26.05(g) (West Supp. 2010); *see also* *Roberts v. State*, 327 S.W.3d 880, 883-84 (Tex. App.—Beaumont 2010, no pet.).

Here, when the trial court appointed trial counsel, the trial court determined that Dixon was indigent. Additionally, the trial court determined that Dixon was indigent when appointing counsel to represent him in this appeal. Moreover, nothing in the record supports a finding that Dixon's financial circumstances changed between the date the trial court initially appointed trial counsel and the date it rendered judgment. Having reviewed the record, we agree there is no evidence to support the trial court's decision that Dixon "has" the ability to pay his attorney's fees. *See* Tex. Code Crim. Proc. Ann. art. 26.05(g); *Roberts*, 327 S.W.3d at 884.

In its brief, the State agrees that there is no evidence to support the trial court's decision to tax Dixon with attorney's fees, and that the trial court's judgment should be modified by deleting the award of attorney's fees. We modify the judgment to delete the award of \$1,000 in attorney's fees as costs; in all other respects, the trial court's judgment is affirmed.

AFFIRMED AS MODIFIED.

HOLLIS HORTON
Justice

Submitted on September 15, 2011
Opinion Delivered November 16, 2011
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.