

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00043-CR

YVONNE LUCILLE FANN, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 221st District Court
Montgomery County, Texas
Trial Cause No. 06-03-02730 CR**

MEMORANDUM OPINION

Yvonne Lucille Fann pleaded guilty to felony driving while intoxicated. The trial court found Fann guilty, assessed punishment at ten years of confinement, suspended imposition of sentence, and placed Fann on community supervision for five years. The State subsequently filed a motion to revoke Fann’s community supervision, which alleged that Fann violated seven conditions of her community supervision. The motion was withdrawn and the conditions of Fann’s community supervision were amended. The State later filed another motion to revoke, which alleged the same seven violations as the first motion. Fann pleaded “not true” to all seven allegations. The trial court found that

Fann violated the terms of her community supervision, revoked Fann's community supervision, and sentenced Fann to five years in prison. In issue one, Fann contends that the trial court improperly revoked her community supervision because the State's second motion to revoke alleged no new violations. In issue two, Fann contends that, absent any new allegations in the State's second motion to revoke, revocation violated due process. We affirm the trial court's judgment.

We review a trial court's revocation of community supervision for abuse of discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). Once the trial court exercises its authority and modifies the conditions of community supervision after a hearing on a motion to revoke, the trial court may not subsequently change that disposition if no further violation is shown. *Rogers v. State*, 640 S.W.2d 248, 250 (Tex. Crim. App. 1981); *Winkle v. State*, 718 S.W.2d 306, 308 (Tex. App.—Dallas 1986, no writ). Absent a formal hearing, the State may re-file its motion to revoke and allege some or all of the violations it had previously alleged, with or without alleging a new violation. *Winkle*, 718 S.W.2d at 308.

To preserve a complaint for appellate review, a party must first present the complaint to the trial court. *See* Tex. R. App. P. 33.1(a); *see also* *Wright v. State*, 640 S.W.2d 265, 270 (Tex. Crim. App. 1982) (op. on reh'g); *Hise v. State*, 640 S.W.2d 271, 273 (Tex. Crim. App. 1982) (op. on reh'g); *Cooper v. State*, 655 S.W.2d 345, 346 (Tex. App.—Dallas 1983, no writ.). According to the record in this case, Fann did not

object to the revocation proceedings. *See* Tex. R. App. P. 33.1(a); *see also* *Wright*, 640 S.W.2d at 270; *Hise*, 640 S.W.2d at 273; *Cooper*, 655 S.W.2d at 346. Additionally, the record shows that the State’s first motion to revoke was dismissed and does not show that a formal hearing was held on the State’s motion, that a plea was taken, that evidence was heard, or that a ruling was made on the motion. The State could, therefore, file a subsequent motion to revoke on all or some of the same grounds alleged in its first motion to revoke, without the need to allege a new violation. *See* *Bigham v. State*, 233 S.W.3d 118, 120-21 (Tex. App.—Texarkana 2007, no pet.); *see also* *Winkle*, 718 S.W.2d at 308. Under these circumstances, we overrule Fann’s two issues and affirm the trial court’s judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on September 6, 2011
Opinion Delivered September 14, 2011
Do Not Publish

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