

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-11-00094-CR**

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**CHARLES RICHARD MCDANIEL, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 252nd District Court  
Jefferson County, Texas  
Trial Cause No. 10-09811**

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**MEMORANDUM OPINION**

Charles Richard McDaniel appeals the trial court's judgment revoking his unadjudicated community supervision and sentencing him to ten years of imprisonment for the offense of injury to a disabled individual. Pursuant to a plea-bargain agreement, the trial court had deferred adjudication of guilt, placed McDaniel on community supervision for five years, and assessed a fine in the amount of \$500. The State filed a motion to revoke McDaniel's unadjudicated probation alleging one violation of the conditions of his community supervision. The State later filed a first amended motion to

revoke McDaniel's unadjudicated probation alleging the same violation as the first motion as Count 1, along with a new alleged violation as Count 2.

At the hearing on the first amended motion to revoke, McDaniel pleaded "not true" to both of the alleged violations. The trial court found the evidence sufficient to find Count 2 "true," revoked McDaniel's unadjudicated community supervision, and found McDaniel guilty of injury to a disabled individual. The trial court sentenced McDaniel to ten years of confinement.

McDaniel argues in his first issue on appeal that he was denied due process because the first amended motion to revoke was untimely and not properly served on him. He argues that "[p]rior courts have observed consistent with notice and timing requirements in other contexts that it is good practice to require the State to serve a copy of the revocation motion [ten] full days before the hearing[.]" (ANT:5-6)

According to the record, the first amended motion to revoke was filed on February 7, 2011. The reporter's record and clerk's record both show that the hearing on the motion was held on February 28, 2011, twenty-one days later. *See* Act of May 23, 2011, 82nd Leg., R.S., ch. 671, §2, 2011 Tex. Sess. Law Serv. 1622, 1624 (West) (to be codified at Tex. Code Crim. Proc. Art. 42.12, §21(b-2)).<sup>1</sup> (In felony cases, the State may amend its motion to revoke any time up to seven days before the revocation hearing, after which time the motion may not be amended except for good cause shown.). McDaniel

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<sup>1</sup> Because amended section 21 contains no material changes applicable to the case, we cite to the current version of the statute.

did not object to the amendment as untimely at the hearing. He waived the complaint he asserts on appeal. Tex. R. App. P. 33.1(a). Issue one is overruled.

In McDaniel's second issue, he contends that due process was not provided because he did not know the terms of his community supervision prior to the filing of the State's first amended motion to revoke. McDaniel argues that the deferred adjudication order and the order amending the terms of community supervision, attached to his brief as exhibits, lack his signature. He states that "[t]he record is void of any indication that the Court or Probation advised [him] of these rules prior to the Motion to Revoke being filed." However, the copies of the deferred adjudication order and the order amending terms of community supervision in the clerk's record have McDaniel's signature. Issue two is overruled. The judgment is affirmed.

AFFIRMED.

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DAVID GAULTNEY  
Justice

Submitted on October 6, 2011  
Opinion Delivered October 19, 2011  
Do Not Publish

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