In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00387-CR
NO. 09-11-00388-CR

EVERETT KEITH WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 09-07483 and 10-10150

MEMORANDUM OPINION

Pursuant to plea bargain agreements, Everett Keith Williams[1] pleaded guilty to felony theft and delivery of a controlled substance. The plea agreement in the delivery of a controlled substance case provided that punishment would run concurrently with the theft case. In each case, the trial court found the evidence sufficient to find Williams guilty, but deferred further proceedings and placed Williams on community supervision for five years. The State subsequently filed a motion to revoke Williams's unadjudicated

[1] In trial cause number 09-10150, the record refers to appellant as Everett Keith Williams a/k/a Keith Williams.

community supervision in both cases. The State alleged that Williams violated the conditions of his community supervision by failing to pay court-assessed fees and failing to successfully complete the Substance Abuse Felony Punishment Facility Program ("SAFPF"). In each case, Williams pleaded "true" to failing to pay court-assessed fees and pleaded "not true" to failing to complete SAFPF. The trial court found that Williams violated the conditions of his community supervision, found Williams guilty of felony theft and delivery of a controlled substance, sentenced Williams to two years in state jail for each offense, and ordered the sentence for delivery of a controlled substance to run consecutively with the theft sentence. On appeal, Williams contends that the trial court abused its discretion by revoking his community supervision and failing to follow the plea bargain agreements or allow Williams to withdraw his pleas. We affirm the trial court's judgment.

Revocation of Community Supervision

In issues one and two, Williams contends that the trial court abused its discretion by revoking his community supervision for failure to pay court-assessed fees and failure to successfully complete SAFPF.

We review a trial court's revocation of deferred adjudication community supervision for abuse of discretion. *Staten v. State*, 328 S.W.3d 901, 904-05 (Tex. App.—Beaumont 2010, no pet.). The State must prove a violation of the terms of community supervision by a preponderance of the evidence. *Rickels v. State*, 202 S.W.3d

759, 763 (Tex. Crim. App. 2006). The State satisfies its burden when the greater weight of credible evidence before the trial court creates a reasonable belief demonstrating it is more probable than not that the defendant has violated a condition of his community supervision. *Staten*, 328 S.W.3d at 905. We view the evidence in the light most favorable to the trial court's ruling. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). A plea of true, standing alone, will support revocation of community supervision. *Cole v. State*, 578 S.W.2d 127, 128 (Tex. Crim. App. [Panel Op.] 1979). Likewise, proof of a single violation of the terms of community supervision will support revocation. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980).

Regarding revocation for failure to pay court-assessed fees, Williams argues that the evidence is insufficient to establish either his ability to pay or failure to pay. The State concedes that the record does not show Williams's inability or refusal to pay court-assessed fees. Nevertheless, Williams pleaded "true" to failing to pay court-assessed fees. Generally, a plea of true is sufficient to support revocation of community supervision and a defendant cannot challenge the sufficiency of the evidence to support an allegation to which he pleaded "true." *See Cole*, 578 S.W.2d at 128; *see also Gipson v. State*, 347 S.W.3d 893, 896 (Tex. App.—Beaumont Aug. 10, 2011, no pet. h.); *Harris v. State*, 160 S.W.3d 621, 626 (Tex. App.—Waco 2005, pet. stricken). "[W]hen the *sole basis* for revocation is failure to pay court-ordered fines and fees, there must be evidence

of willful refusal to pay or failure to make sufficient bona fide efforts to pay." *Gipson*, 347 S.W.3d at 896-97 (emphasis added).

In this case, Williams's failure to pay court-assessed fees is not the sole basis for revocation. At the revocation hearing, SAFPF Supervisor Cindy Cherry testified that Williams was ordered to successfully complete SAFPF, but was unsuccessfully discharged after his second removal for fighting. Cherry explained that the first offense was reduced from fighting without a weapon to creating a disturbance and the second offense was a cardinal rule violation for assaulting another offender without a weapon. Cherry testified that Williams was placed in segregation on two occasions, which Cherry described as a very rare occurrence and an indication of how serious a problem Williams had become in SAFPF. Additionally, the State asked the trial court to take judicial notice of the file, which included a letter showing that Williams was discharged from SAFPF for committing two major violations.

Williams testified that he did not get into any fights and was not charged with any fights while in SAFPF. Williams testified that he was charged with creating a disturbance in the first offense, to which he pleaded guilty, and received a fifteen-day sanction. He testified that the second offense was reduced to a safety violation and he was found not guilty, but that he served ten days in solitary confinement for this offense. He did not believe that he had done anything to warrant being discharged from SAFPF. Rather,

Williams believed that he was exonerated from the two offenses and was prematurely discharged from SAFPF. He wanted to re-enter and complete SAFPF.

Williams contends that he was wrongfully discharged from SAFPF and, consequently, the evidence is insufficient to show that he failed to complete the program. However, as sole trier of fact, the trial court was entitled to judge the credibility of the witnesses and decide what weight to give the testimony. *Brooks v. State*, 153 S.W.3d 124, 127 (Tex. App.—Beaumont 2004, no pet.). In doing so, the trial court could reasonably conclude that Williams did not successfully complete SAFPF. Viewing the evidence in the light most favorable to the trial court's ruling, we conclude that the State proved, by a preponderance of the evidence, that Williams violated a condition of his community supervision by failing to successfully complete SAFPF. *See Rickels*, 202 S.W.3d at 763; *see also Cardona*, 665 S.W.2d at 493. Because the trial court did not abuse its discretion by revoking Williams's unadjudicated community supervision, we overrule issues one and two.

The Plea Agreement

In issue three, Williams contends that the trial court failed to comply with the plea agreement's provision regarding concurrent punishment or allow Williams an opportunity to withdraw his plea.

"When the parties purport to have a plea bargain as to the sentence to be assessed after adjudication, the trial court is not bound by the rules that apply to plea bargains at an

original sentencing." *Ex parte Huskins*, 176 S.W.3d 818, 819 (Tex. Crim. App. 2005). "[O]nce the trial court proceeds to adjudication, it is restricted in the sentence it imposes only by the relevant statutory limits." *Von Schounmacher v. State*, 5 S.W.3d 221, 223 (Tex. Crim. App. 1999). "[I]n the context of revocation proceedings, the legislature has not authorized binding plea agreements, has not required the court to inquire as to the existence of a plea agreement or admonish the defendant pursuant to 26.13, and has not provided for withdrawal of a plea after sentencing." *Gutierrez v. State*, 108 S.W.3d 304, 309-10 (Tex. Crim. App. 2003).

Once Williams violated the deferred adjudication community supervision orders, the trial court was not obligated to comply with the plea agreements or to allow Williams an opportunity to withdraw his pleas. *See Huskins*, 176 S.W.3d at 819; *see also Gutierrez*, 108 S.W.3d at 309-10. The trial court imposed sentences within the statutory range of punishment for each offense and had the discretion to impose concurrent or consecutive sentences. *See* Tex. Penal Code Ann. § 31.03(e)(4)(A) (West Supp. 2011) (Felony theft is a state jail felony when the value of the property stolen is $1,500 or more but less than $20,000); *see also* Tex. Health & Safety Code Ann. § 481.112(b) (West 2010) (Delivery of a controlled substance in penalty group one is a state jail felony if the aggregate weight is less than one gram); Tex. Penal Code Ann. § 12.35(a) (West 2011) (State jail felony is punishable by 180 days to two years in state jail); Tex. Code Crim. Proc. Ann. art. 42.08(a) (West Supp. 2011) (The trial court has discretion to impose

concurrent or consecutive sentences.).[2] Therefore, we overrule issue three and affirm the trial court's judgment.

AFFIRMED.

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STEVE McKEITHEN
Chief Justice

Submitted on November 22, 2011
Opinion Delivered December 14, 2011
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Before McKeithen, C.J., Gaultney and Horton, JJ.

[2] We cite to the current versions of the statutes because they do not contain changes material to this case.