

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00416-CR

JEREMEY JERMAINE PELICAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 10-10373

MEMORANDUM OPINION

This is an appeal from the trial court's judgment revoking community supervision. In three appellate issues, Jeremey Jermaine Pelican challenges the constitutionality of his sentence under the United States Constitution and the Texas Constitution, as well as the legal sufficiency of the evidence supporting the trial court's determination that he violated a condition of his community supervision. We affirm the trial court's judgment.

The State indicted Pelican for engaging in organized criminal activity, a third-degree felony. Pursuant to a plea bargain agreement, Pelican pleaded guilty to the lesser-included offense of fraudulent use of identifying information, a state jail felony. The trial court found the evidence sufficient to find Pelican guilty, but deferred further proceedings, placed Pelican on community supervision for five years, and assessed a fine of \$750. The State subsequently filed a motion to revoke Pelican's unadjudicated community supervision. Pelican pleaded "[n]ot true[]" to the alleged violations of the terms of his community supervision. After conducting an evidentiary hearing, the trial court found that Pelican violated the terms of his community supervision, found him guilty, and assessed punishment at two years of confinement in a state jail facility.

In issue one, Pelican argues that his sentence was constitutionally disproportionate and unreasonable under the Eighth Amendment to the United States Constitution. In issue two, Pelican contends his sentence was constitutionally disproportionate and unreasonable under article I, section 13 of the Texas Constitution. We address issues one and two together.

The record does not reflect that Pelican raised his state and federal constitutional complaints in the trial court. *See* Tex. R. App. P. 33.1(a). However, even if Pelican had preserved his issue for our review, his argument would still

fail. Pelican's sentence was within the statutorily-authorized range of punishment for his offense. *See* Tex. Penal Code Ann. § 32.51(c)(1) (West Supp. 2015) (Fraudulent use of identifying information is a state jail felony if the number of items obtained, possessed, transferred, or used is less than five.); *Id.* § 12.35(a) (West Supp. 2015) (State jail felony punishment is confinement of not more than two years or less than 180 days in a state jail facility and a fine of up to \$10,000.).¹ Generally, a sentence that is within the range of punishment established by the Legislature will not be disturbed on appeal. *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). In addition, a punishment that is within the statutory range for the offense is generally not excessive under the United States Constitution or the Texas Constitution. *Kirk v. State*, 949 S.W.2d 769, 772 (Tex. App.—Dallas 1997, pet. ref'd); *see also Jackson v. State*, 989 S.W.2d 842, 846 (Tex. App.—Texarkana 1999, no pet.). Accordingly, we overrule issues one and two.

In his third issue, Pelican argues that the evidence was legally insufficient to support the trial court's determination that he had violated the conditions of his community supervision. The State alleged in its motion to revoke that Pelican had violated conditions number one and eleven of his community supervision order by

¹Because the amendments to sections 32.51(c)(1) and 12.35(a) of the Texas Penal Code are not material to this appeal, we cite to the current version of both statutes.

possessing marijuana on or about April 14, 2015. The State also alleged in its first amended motion to revoke that Pelican had violated condition number one of his community supervision order by committing the offense of felony theft of a firearm on or about April 27, 2015. At the revocation hearing, the State advised the trial court that it was proceeding on the allegations in the original motion.

At the evidentiary hearing, the State presented testimony from several police officers concerning the allegation that Pelican had possessed marijuana on or about April 14, 2015. Detective Alfred Spikes testified that he works in the narcotics division of the Beaumont Police Department and that about two years prior to the offense at issue, a confidential informant reported that Pelican was transporting narcotics from Houston to Beaumont. Spikes researched Pelican and conducted physical surveillance on him. Spikes testified that based on the informant's tip and his surveillance of Pelican, he believed that Pelican was involved in narcotics activity. According to Spikes, his investigation led officers from the interdiction unit to stop Pelican for a valid traffic offense, and during the stop, they found a stolen gun and a large plastic bag with small particles of marijuana inside.

Spikes contacted the Drug Enforcement Agency concerning his investigation of Pelican, and Officer Phillip Smith obtained a tracking order for Pelican's vehicle on April 9, 2015. Spikes placed a global positioning system (GPS) tracking device

on Pelican's vehicle and started tracking Pelican's movements.² On April 14, 2015, Spikes, along with other officers who had been involved in the narcotics investigation, monitored Pelican visually and via the GPS tracking device as he traveled to Houston, which is where Spikes believed Pelican was getting narcotics. During Pelican's return trip to Jefferson County, interdiction officers stopped Pelican and arrested him.

Detective Clint Weir, who works in the criminal interdiction and narcotics unit of the Beaumont Police Department, testified that on April 14, 2015, he stopped Pelican for following too closely and for having no liability insurance. During the traffic stop, Weir smelled marijuana as soon as he approached the vehicle, and based upon probable cause and Pelican's consent, Weir searched Pelican's truck. Weir found approximately fifteen and a half pounds of marijuana in a tool box located in the bed of Pelican's truck.

At a revocation hearing, the State has the burden to establish the alleged violations by a preponderance of the evidence. *Rickels v. State*, 202 S.W.3d 759,

²Pelican filed a motion to suppress evidence regarding the seizure of the marijuana from the traffic stop, contending that the warrantless stop and search was unconstitutional because it was based upon a GPS tracking device that had been illegally installed. On appeal, Pelican does not complain about the trial court's decision denying his motion to suppress and motion to quash, in which the trial court found that the search of Pelican's vehicle was "lawful, constitutional and independent of any arguable taint from [the] GPS tracking device[.]"

763-64 (Tex. Crim. App. 2006); *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993). The trial court is the sole trier of facts and judge of the credibility of witnesses, and the trial court decides what weight to give to the testimony. *Cochran v. State*, 78 S.W.3d 20, 28 (Tex. App.—Tyler 2002, no pet.). We review the trial court’s decision to revoke community supervision for an abuse of discretion. *Rickels*, 202 S.W.3d at 763. The trial court abuses its discretion only if its decision “was so clearly wrong as to lie outside that zone within which reasonable persons might disagree.” *Cantu v. State*, 842 S.W.2d 667, 682 (Tex. Crim. App. 1992). 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). Proof of a single violation of the terms of community supervision is sufficient to support revocation. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980).

Several officers testified that Pelican possessed marijuana on April 14, 2015. The evidence adduced at the hearing was sufficient to support the trial court’s finding that Pelican violated the conditions of his community supervision by committing the offense of possession of marijuana on or about April 14, 2015. *See Rickels*, 202 S.W.3d at 763-64; *Cantu*, 842 S.W.2d at 682; *Moore*, 605 S.W.2d at 926; *Cochran*, 78 S.W.3d at 28. Therefore, the trial court did not abuse its

discretion by revoking Pelican's community supervision. We overrule issue three and affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on May 4, 2016
Opinion Delivered May 25, 2016
Do Not Publish

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