



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-15-00138-CR

CRUZ SALAS GARCIA

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 355TH DISTRICT COURT OF HOOD COUNTY
TRIAL COURT NO. 9830

MEMORANDUM OPINION¹

Appellant Cruz Salas Garcia appeals the trial court's judgment revoking his community supervision and sentencing him to confinement for eight years in the penitentiary. In two issues, Appellant argues that the trial court, when revoking his community supervision, erred by finding (1) that he was intoxicated and (2) that he was in a public place while allegedly intoxicated. We affirm.

¹See Tex. R. App. P. 47.4.

On February 12, 2015, the State filed its “First Amended Motion to Revoke Probation” and alleged that Appellant had violated the conditions of his community supervision² in three ways:

Defendant has violated the terms and conditions of his probation in the following manner:

A. CRUZ SALAS GARCIA, Defendant, on or about the 27th day of January, 2015, in Tarrant County, Texas did then and there intentionally or knowingly appear in a public place while intoxicated and said defendant was a danger to himself or another, a violation of condition number one of this Court’s order.

B. CRUZ SALAS GARCIA, Defendant, on or about the 28th day of January, 2015, in Wise County, Texas did then and there intentionally or knowingly possess a controlled substance, namely synthetic cannabinoid, of two ounces or less, including any adulterant or dilutants, a violation of condition number one of this Court’s order.

C. CRUZ SALAS GARCIA, Defendant, failed to abstain from the use of controlled substances and on or about January 27, 2015, admitted to North Richland Hills PD Officer Hollister to smoking K2 on or about January 27, 2015, a violation of condition number two of this Court’s order.

The trial court revoked Appellant’s probation based on the allegations in paragraphs A and C above.

In Appellant’s first issue, he asserts that the trial court abused its discretion by revoking his community supervision because the State failed to establish by a preponderance of the evidence that he was intoxicated. In his second issue, Appellant argues that no evidence exists that he was in a public place while

²The terms “probation” and “community supervision” share the same meaning and are generally used interchangeably. *Prevato v. State*, 77 S.W.3d 317, 317 n.1 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

“intoxicated,” and the trial court abused its discretion in so finding. Both issues attack only the trial court’s finding in paragraph A.

We review an order revoking community supervision under an abuse-of-discretion standard. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). In a revocation proceeding, the State must prove by a preponderance of the evidence that the defendant violated the terms and conditions of community supervision. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993). The trial court is the sole judge of the witnesses’ credibility and the weight to be given their testimony, and we review the evidence in the light most favorable to the trial court’s ruling. *Cardona*, 665 S.W.2d at 493; *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981). If the State fails to meet its burden of proof, the trial court abuses its discretion by revoking the community supervision. *Cardona*, 665 S.W.2d at 493–94.

Proof of a single violation suffices to support a revocation. *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012); *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980); *Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. [Panel Op.] 1980); see *Leach v. State*, 170 S.W.3d 669, 672 (Tex. App.—Fort Worth 2005, pet. ref’d). To prevail on appeal, then, an appellant must successfully challenge all findings that support the revocation order. *Black v. State*, 411 S.W.3d 25, 28 (Tex. App.—Houston [14th Dist.] 2013, no pet.); see *Garcia*, 387 S.W.3d at 26; *Leach*, 170 S.W.3d at 672. When the

trial court finds several violations, we will affirm a revocation order if the State proved any one of them by a preponderance of the evidence. *Smith v. State*, 286 S.W.3d 333, 342 (Tex. Crim. App. 2009) (“We have long held that ‘one sufficient ground for revocation would support the trial court’s order revoking’ community supervision.”) (citations omitted). As a corollary, the trial court’s judgment should be affirmed if the appellant does not challenge each ground on which the trial court revoked community supervision. *Joseph v. State*, 3 S.W.3d 627, 640 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (“Thus, in order to prevail, appellant must successfully challenge all the findings that support the revocation order.”).

At the revocation hearing, Officer Dan Hollister testified that (1) he asked Appellant when he had last smoked K-2 (a synthetic form of marijuana) and (2) Appellant responded that he had last smoked it in a joint about 30 minutes before Officer Hollister arrived. Because this evidence supports the trial court’s finding on the ground alleged in paragraph C, and because Appellant has not challenged that finding on appeal, we affirm the trial court’s order on that basis. See *Smith*, 286 S.W.3d at 342.

Because we can affirm the trial court’s judgment based on the unchallenged paragraph C finding, any putative error in connection with the paragraph A finding becomes moot. See *id.* We thus overrule Appellant’s first and second issues, which deal only with paragraph A, as moot. See Tex. R. App. P. 47.4 (“If the issues are settled, the court should write a brief

memorandum opinion no longer than necessary to advise the parties of the court's decision and the basic reasons for it.”).

We affirm the trial court's judgment.

/s/ Elizabeth Kerr
ELIZABETH KERR
JUSTICE

PANEL: WALKER, MEIER, and KERR, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: January 26, 2017