



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

NO. 02-17-00107-CR

RONNIE LEE ROWLEY

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 432ND DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1290614D

MEMORANDUM OPINION¹

I. INTRODUCTION

Appellant Ronnie Lee Rowley appeals from the adjudication of his guilt, the revocation of his community supervision, and the resulting three-year sentence after he pleaded true to violating several community-supervision conditions. In a single issue, he argues that the trial court violated his federal due-process rights

¹See Tex. R. App. P. 47.4.

because most of the State's violation allegations were based on his inability to pay. We conclude that the trial court did not abuse its discretion in adjudicating Appellant's guilt and revoking his community supervision. But because the trial court did not orally pronounce the fine that was included in the written judgment, we modify the judgment to delete the fine and affirm it as modified. See Tex. R. App. P. 43.2(b).

II. BACKGROUND

On November 19, 2012, Appellant pleaded guilty to injury to an elderly individual causing bodily injury. See Tex. Penal Code Ann. § 22.04(a) (West Supp. 2017). Following the terms of his plea-bargain agreement with the State, the trial court deferred adjudicating his guilt and placed him on community supervision for five years with a nonsuspended \$500 fine. See Tex. Code Crim. Proc. Ann. arts. 42A.101, 42A.104, 42A.651(a)(1) (West Supp. 2017). The trial court imposed more than twenty community-supervision conditions, including the requirements that Appellant complete a treatment program, complete 160 hours of community service, complete a Batterer's Intervention and Prevention Program ("BIPP"), and pay a monthly supervision fee.

On March 11, 2013, the State filed a petition to proceed with an adjudication of guilt based on Appellant's alleged violation of four community-

supervision conditions.² See *id.* art. 42A.108 (West Supp. 2017). On May 28, 2013, the trial court dismissed the State’s petition but supplemented Appellant’s conditions. See *id.* art. 42A.752 (West Supp. 2017). Over the next three years, the trial court supplemented or amended Appellant’s community-supervision conditions thirteen times. On August 19, 2016, the State filed a second petition to proceed with an adjudication of guilt, alleging that Appellant failed to: (1) complete the treatment program, (2) complete 160 hours of community service, (3) complete the BIPP, (4) submit to continuous alcohol monitoring, and (5) pay the monthly supervision fee.

On March 31, 2017, the trial court held a hearing on the State’s petition, and Appellant pleaded true to allegations one, two, three, and five.³ At the hearing, Appellant testified that he believed he was excused from the community-service condition because he had given his community-supervision officer a letter from his doctor regarding his long-term back issues. Appellant recognized that the letter was not included in his community-supervision file, but he did not attempt to admit the letter into evidence at the hearing. Appellant also testified he was unable to pay the monthly-supervision fees because he spent money

²The State alleged that Appellant twice consumed alcohol, failed to report to his community-supervision officer in February 2013, failed to timely report his change in address, and contacted the complainant.

³The State withdrew the alcohol-monitoring allegation.

fixing his car, he gave \$3,700 to his father, and his ex-wife spent the rest of his money.

Following the hearing, the trial court adjudged Appellant guilty of the underlying offense, revoked his community supervision, and orally sentenced him to three years' confinement. See *id.* arts. 42A.110, 42A.755 (West Supp. 2017). The written judgment adjudicating guilt imposed the three-year sentence and assessed a \$499.81 fine, which was also a part of the incorporated order to withdraw funds from Appellant's inmate trust account.

III. APPLICABLE LAW

We review an order revoking community supervision under an abuse-of-discretion standard. See *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013). A trial court may revoke community supervision if it affords the defendant due process and the State proves by a preponderance of the evidence that the defendant violated a condition of community supervision as alleged in the petition. See *Leonard v. State*, 385 S.W.3d 570, 576 (Tex. Crim. App. 2012) (op. on reh'g); *Euler v. State*, 218 S.W.3d 88, 91 (Tex. Crim. App. 2007); *Rickels v. State*, 202 S.W.3d 759, 764 (Tex. Crim. App. 2006). A finding of a single violation of community supervision is sufficient to support a revocation. See *Smith v. State*, 286 S.W.3d 333, 342 (Tex. Crim. App. 2009). Further, a defendant's plea of true generally is sufficient on its own to support a trial court's decision to revoke community supervision. See *Tapia v. State*, 462 S.W.3d 29, 31 n.2 (Tex. Crim. App. 2015); *Leonard*, 385 S.W.3d at 576.

IV. DISCUSSION

Appellant contends that the trial court erred by revoking his community supervision because each of the violations to which he pleaded true revolved around his inability to pay, violating his due-process rights. As a condition of his community supervision, Appellant was required to complete 160 hours of community service at a rate of no fewer than 12 hours per month. Appellant admittedly failed to complete the required community-service hours and pleaded true to this violation allegation. Appellant testified that the reason he failed to complete the required community service was due to his belief that he was excused because of his back condition. Appellant stated that he chose not to receive disability benefits for his condition because he believed he could “make more money honestly working, and [he is] too young to be on disability.” Although Appellant stated that he had provided a doctor’s letter to his community-supervision officer regarding his injury, Appellant’s testimony is the only evidence in the record regarding the letter. The trial court was free to determine that this testimony was not credible and, thus, did not excuse Appellant’s failure. See *Miles v. State*, 343 S.W.3d 908, 913–14 (Tex. App.—Fort Worth 2011, no pet.); *Stracener v. State*, No. 06-08-00045-CR, 2009 WL 3364979, at *4 (Tex. App.—Texarkana Oct. 21, 2009, no pet.) (mem. op., not designated for publication).

But more importantly, Appellant pleaded true to the community-service violation, which did not involve his inability to pay, and he never asserted that his

failure to complete community service was due to his financial hardship. Thus, the trial court did not abuse its discretion by revoking Appellant’s community supervision based on the community-service allegation in the State’s petition.⁴ See *Dansby v. State*, 398 S.W.3d 233, 240–41 (Tex. Crim. App. 2013) (recognizing that revocation may be upheld on proof of one violation if that violation is free of the constitutional infirmity raised by the appellant); *Kulhanek v. State*, No. 13-15-00265-CR, 2016 WL 6804458, at *5 (Tex. App.—Corpus Christi Nov. 10, 2016, no pet.) (mem. op., not designated for publication) (“Given appellant’s plea of true and Deputy Swain’s testimony [regarding one violation allegation], the trial court could reasonably conclude that the State met its burden of proving by a preponderance of evidence that appellant [violated the condition]. This finding alone is sufficient to support the trial court’s judgment.” (citations omitted)). We overrule Appellant’s issue asserting that his due-process rights were violated because his revocation was based on an inability to pay.

Although we have overruled Appellant’s issue on appeal, our review of the record reveals that we must modify the trial court’s written judgment with regard

⁴The State argues that Appellant failed to preserve his appellate argument for our review because he did not raise it during the revocation proceedings. See, e.g., *Riles v. State*, 452 S.W.3d 333, 337 (Tex. Crim. App. 2015); *Bryant v. State*, 391 S.W.3d 86, 91–92 (Tex. Crim. App. 2012). The State is correct that Appellant did not raise his due-process argument in the trial court. But even assuming that his specific constitutional complaint need not be raised in the court below, he would be entitled to no relief based on his plea of true to an allegation that did not involve his due-process argument—his inability to pay. See generally *Gipson v. State*, 383 S.W.3d 152, 159 (Tex. Crim. App. 2012) (recognizing intermediate appellate court must address preservation of error if reversing trial court’s judgment).

to the assessment of a \$499.81 fine. The trial court did not orally assess a fine during its oral pronouncement of Appellant's sentence at the revocation hearing, but the written judgment adjudicating guilt and the incorporated order to withdraw funds included the fine. Although the trial court included a "Not Suspended" \$500 fine in the order of deferred adjudication, the judgment adjudicating Appellant's guilt set aside the prior deferred order, including the fine. See *Taylor v. State*, 131 S.W.3d 497, 499–500 (Tex. Crim. App. 2004); *Alexander v. State*, 301 S.W.3d 361, 363 (Tex. App.—Fort Worth 2009, no pet.); see also *Wordlaw v. State*, Nos. 02-14-00286-CR, 02-14-00287-CR, 2015 WL 505231, at *1 (Tex. App.—Fort Worth Feb. 5, 2015, no pet.) (mem. op., not designated for publication). Of course, the trial court's oral pronouncement of sentence controls over its written judgment to the extent they conflict. *Taylor*, 131 S.W.3d at 500, 502. Accordingly, because the trial court did not include a fine in its oral pronouncement of sentence at Appellant's revocation hearing, we modify the trial court's judgment adjudicating guilt to delete the \$499.81 fine, which must also be removed from the incorporated order to withdraw funds from Appellant's inmate trust account. See *Taylor*, 131 S.W.3d at 502; *Bowie v. State*, No. 02-16-00379-CR, 2017 WL 2806320, at *3 (Tex. App.—Fort Worth June 29, 2017, no pet.) (mem. op., not designated for publication); *Cox v. State*, No. 02-13-00596-CR, 2015 WL 831544 (Tex. App.—Fort Worth Feb. 26, 2015, no pet.) (mem. op., not designated for publication).

V. CONCLUSION

Based on Appellant's plea of true to a violation that did not involve Appellant's inability to pay, we conclude that the trial court did not abuse its discretion by adjudicating Appellant's guilt and revoking his community supervision. But because the fine must be deleted from the judgment adjudicating Appellant's guilt and the incorporated order to withdraw funds, we modify the judgment and order to do so and affirm as modified.

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: SUDDERTH, C.J.; GABRIEL and PITTMAN, JJ.

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

DELIVERED: November 30, 2017