In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00228-CR

GARY ANDREW CALLAWAY, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 46th District Court
Hardeman County, Texas
Trial Court No. 4201, Honorable Dan Mike Bird, Presiding

March 29, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Appellant Gary Andrew Callaway appeals from the trial court's order revoking his community supervision and imposing a sentence of two years in the State Jail Division of the Texas Department of Criminal Justice. Through two issues, appellant contends the trial court erroneously revoked his community supervision. We will affirm.

Background

Appellant was charged via information with the state jail felony offense of debit card abuse.[1] After reaching an agreement with the State, appellant pled guilty. He was placed on community supervision for a period of five years. His community supervision was subject to certain terms and conditions.

In April 2015, the State filed a motion to revoke appellant's community supervision, alleging he had violated two of its terms. The State alleged appellant had failed to report to his community supervision officer as required[2] and had failed to pay his fine, court costs, restitution and services fees as required. The court heard the motion in May 2015. Appellant pled "not true" to each of the State's allegations.

At the hearing, Clay Conley, a Community Supervision Officer, testified appellant failed to report to the department in October 2012, April and September 2013, May and July 2014 and January and March 2015. He also testified appellant was "delinquent $167.90."

The trial court determined appellant committed both the alleged violations of terms of his community supervision, revoked his community supervision and assessed punishment as noted. Appellant timely appealed.

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[1] TEX. PENAL CODE ANN. § 32.31 (West 2014).

[2] TEX. CODE CRIM. PROC. ANN. art. 42.12, § 11(a)(4) provides that conditions of community supervision may include conditions that the defendant shall "[r]eport to the supervision officer as directed by the judge or supervision officer and obey all rules and regulations of the community supervision and corrections department[.]"

Analysis

Through two issues, appellant contends the evidence was insufficient to prove, by a preponderance of the evidence, he violated the terms of his community supervision.

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 credibility of the witnesses 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; *Allbright v. State,* 13 S.W.3d 817, 819 (Tex. App.—Fort Worth 2000, pet. ref'd). 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 by a preponderance of the evidence of any one of the alleged violations of the conditions of community supervision is sufficient to support a revocation order. *Smith v. State,* 286 S.W.3d 333, 342 (Tex. Crim. App. 2009); *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980). In community supervision revocations, the preponderance of the evidence standard means "that greater weight of the credible evidence which would create a reasonable belief that the defendant has violated a condition of his probation." *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013) (*quoting Rickels v. State*, 202 S.W.3d 759, 764 (Tex. Crim. App. 2006)).

On direct examination, Conley answered, "No, sir" to each of the district attorney's questions asking if appellant reported for the months listed in the motion to revoke. For example, Conley gave that response to a question asking, "Did he report for the months of May and July in 2014?"

On cross-examination, Conley was asked whether there was "anyone else" appellant could have reported to in the community supervision office. He was asked that question with respect to each of the months a failure-to-report was alleged, and gave varying responses as to the different months. As to October 2012, Conley testified appellant "could have reported" to either of two other supervision officers who worked with Conley, but, Conley continued, "he didn't because it wasn't chronoed."[3] On further questioning, he clarified that appellant did not report to him personally during that month and "it's not in his file that he reported."

As to April and September 2013, Conley said appellant "could have reported" to any of the three supervision officers. Asked if he "personally [knew] whether he reported to any of the other officers," Conley responded, "Not to my knowledge."

With respect to May and July 2014, Conley said appellant could have reported to "[t]he same three people." This time, asked if he knew personally whether appellant reported to either of the other officers, Conley answered, "I know that he didn't report to any of them because at that time he was solely my case." Asked if appellant could report only to Conley, he responded, "Well, I'm the only one that he does report to and I

[3] Conley later explained his office's chronological record of appointments and meetings with probationers, maintained in a computerized data base. He referred to entries into the system as "chronos."

check with [the other two officers] also when my other people don’t show up if anybody’s seen them.”

Finally, with respect to January and March 2015, Conley said appellant “could have reported to any of the three of us.” Asked if he had “personal knowledge whether [appellant] reported to the other two,” Conley responded, “He didn’t - -.” Pressed about his personal knowledge, Conley told the court, “I mean I was present at the office for him to report and he wasn’t there.” As cross-examination continued, Conley said he believed he was present every day, and each hour, his office was open during those two months.

Conley further testified on cross-examination to the effect that on the occasions appellant made “office visits” or “interviews,” a written record was made and that such records were in Conley’s possession.

Conley was the only witness to testify, and no other evidence was presented. Appellant argued to the court that the evidence was not sufficient to support a finding that he failed to report for the months alleged, and he makes the same argument on appeal.

As noted, the trial court was the sole judge of the State’s witness’s credibility and the weight to be given his testimony, and for sufficiency purposes we review the testimony in the light most favorable to the court's ruling. *Cardona,* 665 S.W.2d at 493. Conley’s direct examination testimony was emphatic that appellant had not reported during any of the months alleged. It was for the trial court as well to assign weight to appellant’s effort on cross-examination to weaken Conley’s direct testimony.

Considering Conley's testimony in the proper light, we have no hesitation to conclude the greater weight of the credible evidence was such as to create a reasonable belief that appellant failed to report as alleged in the motion to revoke. *Hacker*, 389 S.W.3d at 865. We see no abuse of discretion in the trial court's revocation of appellant's community supervision because of his failure to report, and overrule appellant's issue challenging that ground for revocation.

Having found one ground supporting revocation of appellant's community supervision, we do not reach appellant's challenge to the evidence he failed to make payments required by his community supervision order. *See 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") (citing, *inter alia*, at n.36, *Ross v. State*, 523 S.W.2d 402 (Tex. Crim. App. 1975) (failure-to-report allegation sufficient to support revocation despite any showing of deficiency in other violations alleged in motion to revoke); *Joseph v. State,* 3 S.W.3d 627, 640 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (finding of single violation of community supervision sufficient to support revocation).

We affirm the judgment of the trial court.

James T. Campbell
Justice

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