In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00365-CR
No. 07-16-00366-CR

THURMAN IVORY WOODS, JR., APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 213th District Court
Tarrant County, Texas
Trial Court Nos. 1233047D & 1237568D; Honorable Louis E. Sturns, Presiding

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April 7, 2017

MEMORANDUM OPINION

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

In April 2012, pursuant to open pleas of guilty, Appellant, Thurman Ivory Woods, Jr., was placed on deferred adjudication community supervision for ten years for two offenses of aggravated robbery with a deadly weapon, to wit: a firearm.[1] Fines of $1,000 were assessed in each cause and were not suspended.

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[1] TEX. PENAL CODE ANN. § 29.03(a)(2) (West 2011). While the charges stemmed from the same criminal incident, the two indictments alleged different victims.

On June 24, 2016, the State moved to proceed to an adjudication of guilt in each case alleging that Appellant had failed to (1) report to his community supervision officer from February 2016 through May 2016, (2) participate and complete his required hours of community service, and (3) participate and comply with a marihuana dependence counseling program.[2] At a hearing on the State's motion, Appellant entered pleas of true to all of the State's allegations. After hearing testimony from Appellant and arguments of counsel, the trial court found the State's allegations to be true, adjudicated Appellant guilty of the charged offenses, and sentenced him to eight years confinement.

Appellant filed his *Motion for New Trial and Motion in Arrest of Judgment* in cause number 1237568D on September 15, 2016, and in cause number 1233047D on September 26, 2016. Both motions were supported by Appellant's affidavit in which he averred that his trial counsel failed to meet with him prior to the hearing so he could explain his history of mental illness and depression at the time of his violations. He also averred that his mother, fiancée, and others would have testified to the circumstances that led to his violations of community supervision had they been called by trial counsel. No hearing was ever requested or scheduled and the motions for new trial were overruled by operation of law.

By a single issue, Appellant asserts the trial court erred in denying him a hearing on his motion for new trial. We affirm.

[2] The State had previously moved to proceed to adjudication in October 2012, but dismissed its motion after the trial court amended the conditions of community supervision.

ANALYSIS

The State contends Appellant failed to preserve his complaint for appellate review. Based on the recent decision of the Texas Court of Criminal Appeals in *Obella v. State*,[3] we agree.

"Preservation of error is a systemic requirement on appeal." *Ford v. State*, 305 S.W.3d 530, 532 (Tex. Crim. App. 2009). "[I]t is the duty of the appellate courts to ensure that a claim is preserved in the trial court before addressing its merits." *Wilson v. State*, 311 S.W.3d 452, 473 (Tex. Crim. App. 2010). Rule 21.6 of the Texas Rules of Appellate Procedure requires that a defendant present the motion for new trial to the trial court within ten days of filing. TEX. R. APP. P. 21.6.

In *Obella*, the Court explained that "presenting" a motion to the trial court means the defendant must give the trial court actual notice that he timely filed the motion for new trial and requested a hearing. *Obella*, 2017 Tex. Crim. App. LEXIS 170, at *3. The Court, citing *Rozell v. State*, 176 S.W.3d 228, 230 (Tex. Crim. App. 2005), noted that the rationale for presentment is the same as that which supports preservation of error generally. *Id.* "[M]erely filing a motion is insufficient" to fulfill the presentment requirement. *Stokes v. State*, 277 S.W.3d 20, 24 (Tex. Crim. App. 2009) (citing *Carranza v. State*, 960 S.W.2d 76, 78 (Tex. Crim. App. 1998)). Absent action that alerts the trial court to the failure to conduct a hearing—presentment, error has not been preserved for appellate review. *Obella,* 2017 Tex. Crim. App. LEXIS 170, at *3. *Carranza* recognized that "presentment" was not clearly defined. *Carranza*, 960 S.W.2d at 78. The Court held that "present" "means the record must show the movant for a new

[3] *Obella v. State*, No. PD-1032-16, __ S.W.3d __, 2017 Tex. Crim. App. LEXIS 170, at *3 (Tex. Crim. App. Feb. 8, 2017) (holding that a reviewing court does not abuse its discretion in failing to hold a hearing on a motion for new trial if no request for hearing was presented to it).

trial sustained the burden of actually delivering the motion for new trial to the trial court or otherwise bringing the motion to the attention or actual notice of the trial court." *Id.* at 79. Examples of "presentment" provided were obtaining a ruling or signature on the motion or having a hearing date set on the docket.

By his motions for new trial, Appellant recited "[a] hearing must be commenced before the 75th day after the sentence . . . ." He prayed for "a new trial on the merits." In his affidavit in support of the motions he requests a new trial; however, nowhere in the record is there evidence of a timely form of "presentment" to the trial court. The docket notations in each case are file-stamped "MOTION FOR NEW TRIAL FILED, COPY SENT TO STATE AND COURT OF APPEALS." The record contains no further support indicating that Appellant presented his motions to the trial court for consideration. Accordingly, Appellant has not demonstrated "presentment" of his motions for new trial to the trial court, and thus, his complaints regarding the trial court's failure to conduct a hearing were not preserved for review. Appellant's sole issue is overruled.

CONCLUSION

The trial court's judgments are affirmed.

Patrick A. Pirtle
Justice

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