In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-17-00404-CR

ROXANNA APRIL REYES, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 64th District Court
Hale County, Texas
Trial Court No. A18933-1109; Honorable Robert W. Kinkaid, Jr., Presiding

May 16, 2018

MEMORANDUM OPINION

Before CAMPBELL, PIRTLE, and PARKER, JJ.

In January 2012, Appellant, Roxanna April Reyes, was convicted of driving while intoxicated with a child passenger under age fifteen and was sentenced to eighteen months in a state jail facility.[1] Her sentence was suspended in favor of five years

[1] TEX. PENAL CODE ANN. § 49.045 (West 2011).

community supervision and a $2,000 fine. In December 2016, the State moved to revoke Appellant's community supervision for various violations of the terms and conditions of her community supervision. Following a hearing on the State's motion, the trial court revoked Appellant's community supervision based on the evidence and on her pleas of true to certain allegations presented by the State. She was sentenced to eighteen months confinement in a state jail facility.[2] By a sole issue, Appellant contends her plea of "not true" to the allegation that she violated her curfew was involuntary and caused her harm.[3] We affirm.

BACKGROUND

When Appellant was placed on community supervision, she agreed to abide by the standard conditions of community supervision. Some of those conditions included that she commit no new offenses, avoid alcoholic beverages, timely notify her supervision officer of any arrests or criminal charges, and more specifically, that she "be home each night not later than 10:00 PM and remain there until 6:00 AM immediately following, unless the defendant [obtained] permission . . . ." As Appellant was nearing the end of

[2] Appellant's initial attempt to appeal from the trial court's order revoking her community supervision was dismissed for want of jurisdiction for a late-filed notice of appeal. *See Reyes v. State*, No. 07-17-00067-CR, 2017 Tex. App. LEXIS 2585, at *2-3 (Tex. App.—Amarillo March 27, 2017, no pet.) (mem. op., not designated for publication). The Texas Court of Criminal Appeals later granted her an out-of-time appeal. *See Ex parte Reyes*, No. WR-86,891-02, 2017 Tex. Crim. App. Unpub. LEXIS 595, at *1-2 (Tex. Crim. App. Sept. 13, 2017).

[3] The Table of Contents of Appellant's brief states the issues as being (I) the trial court erred by denying Appellant a jury instruction on mistake of fact pursuant to Texas Penal Code § 8.02, and (II) the trial court committed reversible error in its jury charge in the guilt-innocence phase of the trial by failing to limit its definition of "knowing" to the relevant conduct of the charged offense; whereas, the restatement of the issue in the body of the brief identifies the issue as stated above. Because this is an appeal from the trial court's revocation of Appellant's community supervision following a bench trial, we disregard Appellant's issues as stated in the Table of Contents.

her term of community supervision, she was arrested twice in one week for public intoxication.

On November 21, 2016, in response to a disturbance call, police officers found her sitting in a vehicle with her boyfriend standing outside the vehicle. The responding officer smelled a strong odor of alcohol on Appellant. She was unable to successfully perform field sobriety tests and was arrested for public intoxication.

On November 25, 2016, at approximately 4:00 a.m., in response to a dispatch call of an intoxicated individual in a vehicle parked alongside a road, an officer found Appellant asleep in the driver's seat with the engine running. She was parked near her boyfriend's home. The officer struggled to wake her, and once he did, he noticed a strong odor of alcohol on her breath and arrested her for public intoxication.

Notwithstanding Appellant's pleas of true to some of the allegations made by the State and a signed *Stipulation of Evidence*, she contested the allegation that she violated curfew by entering a plea of "not true." At the hearing on the State's motion, however, while questioned by her attorney, the following exchange occurred:

> Q. Okay. Then the last allegation is on the 25th of November 2016 that you violated your curfew, you had pled not true. Were you staying at the home of your boyfriend - -
>
> A. No.
>
> Q. - - at that - -
>
> A. I am - -
>
> Q. I'm sorry. Let me finish my question, please. Were you staying with - - at the home of your boyfriend at that time as your residence?
>
> A. No, sir.

Q. Okay. You're aware that you're supposed to be home on probation and not violate your curfew; is that correct?

A. Yes, sir.

Q. Okay. What explanation do you have for the Court about pleading not true to allegation number four, violation of curfew?

A. That one I - - I'm - - I'm not quite understanding what you're asking.

Q. Okay. Do you understand that you're supposed to be at the home that you tell the probation department that you are living at by a certain time each evening?

A. Yes, sir.

Q. Okay. Do you understand that, evidently that you were in - - in a car out in front of your boyfriend's house on the evening of the 25th?

A. Yes, sir.

Q. And do you understand that in number four here that it is alleged that you violated your curfew?

A. Yes, sir.

Q. You pled not true to the allegation, correct? Did you plead not true to the allegation of violating your curfew?

A. Yes.

Q. Okay. Why did you plead not true to that allegation?

A. *I didn't quite understand what he was saying that - - when he repeated them*, *the time.*

Q. Okay. So are you saying that you would now like to remove that not true allegation and tell the Judge that it's true?

A. Yes.

(Emphasis in Appellant's brief).

STANDARD OF REVIEW

When reviewing an order revoking community supervision, the sole question before this court is whether the trial court abused its discretion. *Hacker v. State*, 389

S.W.3d 860, 865 (Tex. Crim. App. 2013) (citing *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006)). In a revocation proceeding, the State must prove by a preponderance of the evidence that the defendant violated a condition of community supervision as alleged in the motion to revoke. *Cobb v. State,* 851 S.W.2d 871, 874 (Tex. Crim. App. 1993). In a revocation context, "a preponderance of the evidence" means "that greater weight of the credible evidence which would create a reasonable belief that the defendant has violated a condition of [her community supervision]." *Hacker*, 389 S.W.3d at 865 (citing *Rickels*, 202 S.W.3d at 764). The trial court abuses its discretion in revoking community supervision if, as to every ground alleged, the State fails to meet its burden of proof. *Cardona v. State*, 665 S.W.2d 492, 494 (Tex. Crim. App. 1984). In determining the sufficiency of the evidence to sustain a revocation, we view the evidence in the light most favorable to the trial court's ruling. *Jones v. State*, 589 S.W.2d 419, 421 (Tex. Crim. App. 1979). Additionally, a plea of true standing alone is sufficient to support a trial court's revocation order. *Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. 1979).

ANALYSIS

Appellant argues that her plea of "not true" to the State's allegation that she violated her curfew was not voluntarily made and caused her harm. We disagree.

Initially, we address Appellant's reliance on article 26.13(a) of the Texas Code of Criminal Procedure (West Supp. 2017), which requires the trial court to administer certain admonishments to a defendant before accepting a guilty plea. She cites the statute in support of her argument that she did not understand the consequences of her plea of "not true" which led to a misunderstanding that harmed her. Statutes governing community

supervision do not reference article 26.13 of the Code and the admonishments provided therein do not apply in revocation proceedings. *See Harris v. State*, 505 S.W.2d 576, 578 (Tex. Crim. App. 1974). *See also Gutierrez v. State*, 108 S.W.3d 304, 309 (Tex. Crim. App. 2003). Consequently, Appellant's reliance on article 26.13(a) is misplaced.

During her testimony, in response to questioning by her attorney, Appellant indicated that she desired to change her "not true" plea to "true" regarding the State's allegation that she violated curfew. It strains credulity to find that Appellant or any defendant could ever be harmed by entering a "not true" plea to an allegation made by the State in a revocation proceeding when the consequences of entering a plea of "true" are quite harsh (a plea of true standing alone is sufficient to support revocation).

Additionally, Appellant points out that during her testimony, she contradicted her pleas of "not true" to two instances of public intoxication by answering affirmatively when asked if she was publicly intoxicated on the two dates in question. She argues that her testimony reflects that she did not understand what she was pleading to at the revocation hearing and maintains the trial court should have considered mitigating evidence of her rehabilitation rather than imposing the original punishment.

Appellant testified unequivocally that she had consumed alcohol on two separate occasions and did enter pleas of "true" to those allegations. She acknowledges in her brief that a plea of "true" to other allegations is sufficient to support the trial court's revocation order. The State also presented evidence to support its motion through Appellant's community supervision officer who testified that, although Appellant had

performed well while under his supervision, she did fail to timely report her arrests to him as required by the terms of community supervision.

Additionally, as the State points out in its brief, due process protections do not require entry of a plea in a revocation proceeding. *See Detrick v. State*, 545 S.W.2d 835, 837 (Tex. Crim. App. 1977); *Williams v. State*, No. 02-16-00200-CR, 2017 Tex. App. LEXIS 3824, at *7 (Tex. App.—Fort Worth April 27, 2017, no pet.) (mem. op., not designated for publication). By entering a plea of not true, Appellant could not have suffered harm.

Based on Appellant's pleas of "true" to some of the allegations made by the State, her signed *Stipulation of Evidence*, and the evidence presented at the hearing, we find the trial court did not abuse its discretion in revoking Appellant's community supervision. Appellant's sole issue is overruled.

CONCLUSION

The trial court's *Judgment Revoking Community Supervision* is affirmed.

Patrick A. Pirtle
Justice

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