



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-19-00152-CR

ABEL OMAR MONTES, APPELLANT

V.

STATE OF TEXAS, APPELLEE

On Appeal from the 242nd District Court of
Castro County, Texas
Trial Court No. B3658-1511, Honorable Kregg Hukill, Presiding

August 14, 2020

MEMORANDUM OPINION

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

Abel Omar Montes appeals from a judgment revoking his community supervision, sentencing him to prison for five years, and ordering him to pay a \$1,500 fine, court costs, a previously mandated attorney's fee, and a lab fee. One issue pends for review. It pertains to whether his community supervision could be revoked without finding that the failure to pay various costs and fees as a condition of his community supervision was willful.

Allegedly, “[t]he trial court failed to follow the mandatory judicial directive announced in *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983) requiring an inquiry into defendant’s ability to pay.”¹ Because it so failed, his community supervision could not be revoked on that basis. We affirm.

The failure to pay the aforementioned sums was but only one ground upon which the State sought to revoke appellant’s community supervision. There were others, which were unrelated to the payment of any monies. And, the trial court found several of them true. For instance, it concluded that appellant failed to report a subsequent arrest and complete community service as required by the conditions of his community supervision. So, the decision to revoke was not based solely on the failure to perform conditions implicating the payment of money.

Moreover, only one ground need support a decision to revoke. *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012). There being multiple grounds at bar which went unquestioned on appeal, we must conclude that the decision to revoke was not an instance of abused discretion or otherwise subject to reversal. This is true even if we were to assume, *arguendo*, that the trial court somehow erred in finding true the ground concerning nonpayment of monetary sums. See *id.* (noting that the decision to revoke was based on multiple grounds and stating that, “even assuming that the State did not exercise due diligence in executing the *capias*, the trial court did not abuse its discretion

¹ “The question in [*Bearden* was] whether the Fourteenth Amendment prohibits a State from revoking an indigent defendant’s probation for failure to pay a fine and restitution.” *Bearden*, 461 U.S. at 661. And, it concluded that a “trial court erred in automatically revoking probation because petitioner could not pay his fine, without determining that petitioner had not made sufficient bona fide efforts to pay or that adequate alternative forms of punishment did not exist.” *Id.*

because no due-diligence defense is available with respect to failure to complete substance-abuse treatment, and proof of a single violation will support revocation”).

We overrule appellant’s issue and affirm the trial court’s judgment.

Brian Quinn
Chief Justice

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