



**In The  
Court of Appeals  
Sixth Appellate District of Texas at Texarkana**

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No. 06-10-00202-CR

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JOHN ANDREW PEDERSON, Appellant

V.

THE STATE OF TEXAS, Appellee

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On Appeal from the 336th Judicial District Court  
Fannin County, Texas  
Trial Court No. CR-09-23260

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Before Morriss, C.J., Carter and Moseley, JJ.  
Memorandum Opinion by Justice Moseley

## MEMORANDUM OPINION

John Andrew Pederson entered a plea of guilty to aggravated assault and a plea of “true” to the issue of use of a deadly weapon (not a firearm) in the commission of that offense; he then submitted the question of punishment to a jury. The jury assessed a verdict of ten years’ imprisonment and a \$10,000.00 fine, but recommended that Pederson be granted community supervision. The trial judge sentenced Pederson in accord with the jury’s verdict, placing Pederson on community supervision for ten years. At the time, Pederson was homeless and the community supervision department helped him gain admission to a program administered by the Veterans Administration (VA). Pederson’s terms of community supervision were amended to require him to

attend and participate in all Veteran Administration programs eligible and shall reside in a Veteran Administration residential program if eligible. Defendant shall abide by all rules and regulations of Veteran Administration and follow all recommendations by the Veteran Administration and/or CSCD<sup>1</sup> Officer . . . .

Pederson failed to complete the program and was “irregularly discharged” from the VA program and a motion to revoke his community supervision was filed less than three months after he was granted that status. It is from the order of revocation of community supervision that Pederson has appealed.

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<sup>1</sup>Community Supervision Corrections Department.

In its motion to revoke community supervision, the State alleged four violations of the terms of community supervision. The only violation<sup>2</sup> the trial court found to be true was the allegation that Pederson had

failed to attend, participate In all Veteran Administration Programs and failed to reside at the Veterans Residential Program. Defendant failed to abide by all the rules and regulations of Veteran Administration and failed to follow all recommendations by Veteran Administration and the CSCD Officer. Defendant failed to notify the CSCD Officer of his whereabouts, thereby violating condition (#39) of the terms and conditions of community supervision.

After a hearing, the trial court entered an order revoking the community supervision and sentencing Pederson to ten years' imprisonment and the payment of the \$10,000.00 fine.

In Pederson's sole issue on appeal, he alleges that the trial court abused its discretion. He bases his argument on the fact that since the State failed to introduce any of the VA rules and regulations, it failed to "prove by a preponderance of the evidence the specific allegation that Mr. Pederson violated an actual rule or regulation" of the VA. The State argues that Pederson

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<sup>2</sup>The State also alleged Pederson 1) failed to pay community supervision fees, 2) failed to pay court costs, and 3) failed to report by telephone to the community supervision officer. The trial court found the allegations concerning the fees and court costs not true based on an inability to pay. Debra Roberts, Director of the Fannin County Community Supervision and Corrections Department, testified, to her knowledge, Pederson did not have any ability to pay the community supervision fee or the court costs. The trial court also found the allegation that Pederson failed to report to his community supervision officer not true. Roberts testified there was no indication in Pederson's file that he reported after arriving at the VA hospital. Pederson's community supervision officer had been dismissed for reasons unrelated to this case. Pederson testified his community supervision officer had provided him with her cell phone number and he had called her on her cell phone. Pederson testified that she would often not answer the cell phone or return his call, but testified he "figured she's the one that's in charge, she knows what she's doing . . . ." Pederson testified he had not been provided an office number for his community supervision officer.

failed to follow all the recommendations by the VA.<sup>3</sup> More to the point here, the State continues that, “even if Appellant did not violate a particular rule or regulation of VA, his behavior was still contrary to the specific instructions of the VA staff, and it was within the trial court’s reasonable discretion to find his behavior violated his conditions of probation.” We agree with the State.

We review a trial court’s decision to revoke community supervision under an abuse of discretion standard and examine the evidence in the light most favorable to the trial court’s order. *Pierce v. State*, 113 S.W.3d 431, 436 (Tex. App.—Texarkana 2003, pet. ref’d). The State has the burden of proving a violation of community supervision by a preponderance of the evidence. *Antwine v. State*, 268 S.W.3d 634, 636 (Tex. App.—Eastland 2008, pet. ref’d). In a community supervision revocation hearing, the trial court is the sole trier of fact. *Jones v. State*, 787 S.W.2d 96, 97 (Tex. App.—Houston [1st Dist.] 1990, pet. ref’d). The trial court also determines the credibility of the witnesses and the weight to be given their testimony. *Id.* It may accept or reject any or all of the witnesses’ testimony. *Mattias v. State*, 731 S.W.2d 936, 940 (Tex. Crim. App. 1987). A trial court does not abuse its discretion to revoke a defendant’s community supervision if the State presents sufficient evidence that the defendant violated at least one term of the community supervision agreement as alleged in the State’s motion to revoke. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 21 (West Supp. 2009) (State must prove every element of at least one

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<sup>3</sup>The State argues Pederson failed to challenge on appeal all of the methods by which Pederson could violate the allegation the trial court found to be true. The State also argues the trial court could make a “reasonable inference” that Pederson’s conduct violated the rules and regulations of the VA. The State also argues “[a]lthough the rulebook itself was never put in evidence, it seems reasonable for the trial court to conclude Appellant’s act of taking another’s property was contrary to the established rules of the VA.” It is not necessary for us to address these arguments.

ground for revocation by preponderance of evidence); *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980); *Bigham v. State*, 233 S.W.3d 118, 121 (Tex. App.—Texarkana 2007, no pet.).

The record contains ample evidence that Pederson failed to follow all the recommendations of the VA. The State introduced business records from the VA which indicate that Pederson failed to obey commands of VA employees and failed to attend classes, attend counseling, and turn in written work assignments, as well as having stolen property from another resident veteran. When asked, “You didn’t adhere to the requirements of the VA and the program, did you,” Pederson responded, “No, sir.” Pederson admitted that he had missed two medical appointments<sup>4</sup> and that he had failed to attend classes regarding credit counseling and anger management.<sup>5</sup> Eventually, the VA placed Pederson on “behavioral probation.” Approximately a week after being placed on “behavioral probation,” Pederson admitted that he removed a lock from another person’s locker and then lied about having done so.

Sufficient evidence was presented for the trial court to have concluded, by a preponderance of the evidence, that Pederson violated a term of his community supervision. We conclude that the trial court did not abuse its discretion in finding that Pederson failed to follow all the recommendations of the VA.

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<sup>4</sup>Pederson testified he forgot about the appointments.

<sup>5</sup>Pederson testified he mistakenly believed the credit counseling classes were not mandatory. Pederson testified he missed the anger management class for oversleeping, but did not inform the instructor that he overslept. Pederson admitted he had been reprimanded for “sleeping in past eight o’clock.”

For the reasons stated, we affirm the judgment of the trial court.

Bailey C. Moseley  
Justice

Date Submitted: July 5, 2011  
Date Decided: July 6, 2011

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