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

No. 06-11-00002-CR

ANTHONY GENE HARRINGTON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 8th Judicial District Court
Hopkins County, Texas
Trial Court No. 0719176

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

MEMORANDUM OPINION

After pleading "guilty" to the offense of possession of a controlled substance,[1] Anthony Gene Harrington was sentenced to ten years' deferred adjudication community supervision. Approximately two years later, the State moved to proceed with adjudication of guilt, alleging Harrington violated the terms of his community supervision by committing the offense of forgery and in failing to comply with program rules and to successfully complete his term of confinement and treatment in a substance abuse felony punishment facility (SAFPF). Harrington complains of the judgment adjudicating his guilt. We affirm the judgment of the trial court because (1) the evidence supports a finding that Harrington committed forgery, (2) the evidence supports a finding that Harrington failed to complete his term in the SAFPF, and (3) no Confrontation Clause claim was preserved.

(1) The Evidence Supports a Finding that Harrington Committed Forgery

Harrington initially complains the evidence was legally insufficient to prove he violated his community supervision by committing another offense and by failing to complete his period of confinement and treatment in a SAFPF. The record demonstrates otherwise.

Because a revocation hearing is unique, and because the trial court has broad discretion in the proceedings, the general standards for reviewing evidentiary sufficiency do not apply. *Miles v. State*, 343 S.W.3d 908, 913 (Tex. App.—Fort Worth 2011, no pet.) (given unique nature of

[1]TEX. HEALTH & SAFETY CODE ANN. § 481.115(b) (West 2010).

revocation proceeding, evidentiary sufficiency challenges on appeal do not apply to trial court's decision to revoke community supervision); *Pierce v. State*, 113 S.W.3d 431, 436 (Tex. App.—Texarkana 2003, pet. ref'd). We review a decision to adjudicate guilt "in the same manner" as we review a decision to revoke community supervision. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (West Supp. 2011). The trial court's decision to revoke community supervision is reviewed for an abuse of discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *In re T.R.S.*, 115 S.W.3d 318, 320 (Tex. App.—Texarkana 2003, no pet.). In order to revoke community supervision, the State must prove by a preponderance of the evidence every element of at least one ground for revocation. *T.R.S.*, 115 S.W.3d at 321. If the greater weight of the credible evidence creates a reasonable belief a defendant has violated a condition of his or her community supervision, a revocation order is not an abuse of discretion and must be upheld. *Rickels*, 202 S.W.3d at 763–64; *T.R.S.*, 115 S.W.3d at 320–21.

Harrington argues there is no rational justification for finding him guilty of forgery beyond a reasonable doubt. The standard in a revocation hearing is not guilt beyond a reasonable doubt. Rather, the standard, as discussed above, is proof of each element of at least one ground asserted for revocation by a preponderance of the evidence. *Moore v. State*, 11 S.W.3d 495, 498 (Tex. App.—Houston [14th Dist.] 2000, no pet.). A single violation is sufficient to support revocation. *O'Neal v. State*, 623 S.W.2d 660, 661 (Tex. Crim. App. 1981).

Here, the motion to proceed to adjudication alleged Harrington committed the new offense

of forgery March 26, 2010, when Harrington forged a signature on a check that was not his. To sustain a finding of forgery, the State had to prove that Harrington forged[2] checks with the intent to defraud another. TEX. PENAL CODE ANN. § 32.21(b) (West 2011).

At trial, Nona Johnson testified that she and Harrington lived together for the past two years, but were separated in April 2010. During that month, Harrington wrote six separate checks on Johnson's checking account, totaling in excess of $500.00. Johnson testified that she is familiar with Harrington's handwriting and recognizes his signature on the checks. Harrington did not have permission to draw the checks on Johnson's bank account. On discovery of these checks in her bank statement, Johnson confronted Harrington, who told Johnson he would reimburse her for the checks. After affording Harrington a reasonable opportunity to replace the withdrawn funds, Johnson made a police report and executed a forgery affidavit.

Because the trial court was the sole trier of the facts and credibility, it was free to believe Johnson's uncontroverted testimony. *See T.R.S.*, 115 S.W.3d at 321. Accordingly, the evidence was sufficient to prove each element of forgery, as alleged, by a preponderance of the evidence. *See Diggs v. State*, 928 S.W.2d 756, 758 (Tex. App.—Houston [14th Dist.] 1996, pet. dism'd) (wife forged check on husband's account when couple was separated, conviction affirmed).

(2) The Evidence Supports a Finding that Evans Failed to Complete His Term in the SAFPF

The terms of Harrington's community supervision included the requirement that he

[2]"Forge" means "to alter, make, complete, execute, or authenticate any writing so that it purports . . . to be the act of another who did not authorize that act." TEX. PENAL CODE ANN. § 32.21(a)(1)(A)(i) (West 2011).

"successfully complete a term of confinement and treatment in a substance abuse felony treatment facility (SAFPF) under this section, abiding by all rules and regulations of said program for a term of not less than 90 days or more than 1 year." The motion to proceed to adjudication alleged Harrington failed to comply with program rules and to successfully complete his term of confinement and treatment in the SAFPF.

Crystal Fetting, Harrington's substance abuse counselor at the SAFPF, testified that the facility has a zero tolerance policy for violence and for threats of violence. While there, Harrington became angry with another inmate and lunged at the inmate with his fists balled. This incident was witnessed by a SAFPF staff member, as well as by other inmates. As a result of this aggressive behavior, Harrington was discharged from the SAFPF, and therefore failed to successfully complete his treatment there.

Harrington's account of these events does not include any threat of violence toward the inmate. Harrington concedes he was angry with the inmate and "walked toward" him. He did not, however, physically threaten violence. In a revocation hearing, the trial court is the sole trier of facts and determines the credibility of the witnesses and the weight to be given to the testimony. *T.R.S.*, 115 S.W.3d at 321. The trial court may accept or reject any or all of a witness' testimony. *Id.* This evidence could have led the trial court to conclude by a preponderance of the evidence that Harrington failed to complete his term in the SAFPF due to Harrington's violation of rules against aggression.

We conclude that the greater weight of the credible evidence, when reviewed in a light most favorable to the ruling, created a reasonable belief that Harrington violated at least one condition of community supervision. The trial court, therefore, did not abuse its discretion in proceeding to adjudication of guilt and sentencing. *Pierce*, 113 S.W.3d at 436.

(3) No Confrontation Clause Claim Was Preserved

Alicia Bowden testified that she is Fetting's supervisor at the SAFPF in Winnsboro. Bowden's testimony centered on Harrington's noncompliance with the facility rules that prohibit even threats of aggressive behavior. During the course of her testimony, Bowden acknowledged the presence of witnesses to Harrington's alleged aggressive behavior. On appeal, Harrington claims he was deprived of his rights under Articles 1.053 and 1.254 of the Texas Code of Criminal Procedure because the witnesses to his alleged aggressive behavior did not testify at trial, and were thus not subject to cross-examination. *See* TEX. CODE CRIM. PROC. ANN. arts. 1.05, 1.25 (West 2005).

Harrington's Confrontation Clause complaints[5] were not raised to the trial court. No objection was made to the failure to call witnesses to the incident of alleged aggressive behavior.

[5]In all state and federal criminal prosecutions, the accused has a right, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, "to be confronted with the witnesses against him." U.S. CONST. amends. VI, XIV; *Crawford v. Washington*, 541 U.S. 36, 42 (2004); *Pointer v. Texas*, 380 U.S. 400, 406 (1965) (applying Sixth Amendment to states). Articles 1.05 and 1.25 of the Texas Code of Criminal Procedure grant those rights of confrontation set forth in the Texas Constitution. *See* TEX. CONST. art 1, § 10. The Texas Constitution and the Texas Code of Criminal Procedure do not provide greater protections than the United States Constitution. *King v. State*, 189 S.W.3d 347, 361–62 (Tex. App.—Fort Worth 2006, no pet.).

Further, no objection was made to Bowden's or Fetting's testimony regarding the alleged aggressive behavior. "The purpose of requiring the objection is to give to the trial court or the opposing party the opportunity to correct the error or remove the basis for the objection." *Martinez v. State*, 22 S.W.3d 504, 507 (Tex. Crim. App. 2000). Harrington never complained to the trial court that he was deprived of his right to confront the witnesses against him. Confrontation Clause complaints are waived if they are not voiced at trial. *Paredes v. State*, 129 S.W.3d 530, 535 (Tex. Crim. App. 2004) (trial objection on hearsay grounds failed to preserve error on Confrontation Clause grounds); *Wright v. State*, 28 S.W.3d 526, 536 (Tex. Crim. App. 2000). Because error was not preserved, we need not decide Harrington's Confrontation Clause complaints.[6]

We affirm the judgment of the trial court.

Josh R. Morriss, III
Chief Justice

Date Submitted: November 14, 2011
Date Decided: December 8, 2011

Do Not Publish

[6]While the Texas Court of Criminal Appeals has not considered whether the Confrontation Clause applies to a revocation hearing, several intermediate courts have determined that, because a revocation hearing is not a stage of a criminal prosecution, the Confrontation Clause does not apply to such hearings. *Wisser v. State*, 350 S.W.3d 161, 163–64 (Tex. App.—San Antonio 2011, no pet.); *Mauro v. State*, 235 S.W.3d 374, 375–76 (Tex. App.—Eastland 2007, pet. ref'd); *Trevino v. State*, 218 S.W.3d 234, 239 (Tex. App.—Houston [14th Dist.] 2007, no pet.); *Diaz v. State*, 172 S.W.3d 668, 672 (Tex. App.—San Antonio 2005, no pet.).