



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

No. 06-11-00147-CR

ANTHONY LEE BLAVIER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 402nd Judicial District Court
Wood County, Texas
Trial Court No. 19,722-2007

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

MEMORANDUM OPINION

I. Factual and Procedural History

In February 2007, Anthony Lee Blavier was placed on four years of community supervision after pleading guilty to the offense of evading detention with a vehicle. In June 2010, the State moved to revoke community supervision, alleging that Blavier violated several conditions of his community supervision. During the June 17, 2010, hearing to revoke, the State and Blavier's counsel indicated that an agreement had been reached in lieu of revocation; however, an issue arose regarding the date for Blavier to begin community service restitution. The hearing was recessed, and without further detail, the record states: "Order submitted; end of proceeding." On the same day, June 17, 2010, the State filed to modify Blavier's community supervision, the court granted the motion, dismissed the State's motion to revoke, and entered an order modifying the conditions of community supervision.

In May 2011, the State filed another motion to revoke Blavier's community supervision, alleging that he violated five of his terms and conditions. Blavier stipulated to his use of drugs and pled "not true."¹ After a full hearing, the trial court found Blavier had violated the terms and conditions of his community supervision, revoked that supervision, and imposed a punishment of two years' confinement in a state jail.

On appeal, Blavier argues that the trial court erred in revoking his community supervision because: (1) the trial court lacked the authority to extend and modify his community supervision

¹The judgment reflects a plea of "true."

period based solely upon Blavier's oral agreement; (2) the motion to revoke his community supervision was not timely filed; and (3) the judgment should be amended to properly reflect his plea of "not true."

We modify the judgment of the trial court and affirm as modified because Blavier agreed, in writing, to modify the period and terms of his community supervision.

II. Written Agreement to Modify the Terms of Community Supervision

In his first point of error, Blavier contends that the trial court lacked the authority to "extend and modify his community supervision period based upon the oral agreement of [his] attorney." We overrule this point of error because there is a written agreement to modify the conditions of community supervision.

The conditions of community supervision may be modified without a formal hearing if the defendant agrees to the modification in writing. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 10(e) (West Supp. 2011). On June 17, 2010, the same day as the revocation hearing, the State filed a motion to modify the conditions of Blavier's community supervision. Blavier signed the motion to modify, stating, "I, hereby agree to this Modification." The trial court granted the motion, and the extension and further conditions of community supervision ordered by the court coincide with those Blavier agreed to in the motion.² Also on June 17, 2010, the trial court entered an order dismissing the State's motion to revoke, because "[Blavier's] Community Supervision was

²We note the modified order required the community service to begin July 15, 2010, rather than in June, which apparently resolved the issue raised by Blavier's counsel during the appearance before the trial court.

modified in lieu of revocation.” Therefore, we overrule this point of error.

In his second point of error, Blavier argues that the State’s motion to revoke Blavier’s community supervision was not timely filed “because the trial court did not have authority to extend Blavier’s community supervision period based upon the oral agreement of Blavier’s attorney.” Since there is a written agreement to modify in this case, this issue is also overruled.

III. Modification of Judgment

The judgment reflects a plea of “true” to the State’s motion to revoke. In his third point of error, Blavier contends, and the State agrees, that the judgment should be modified to reflect a plea of “not true.”

An appellate court has the authority to reform judgments and correct typographical errors to make the record speak the truth when the matter has been called to its attention by any source. TEX. R. APP. P. 43.2(b) (permitting appellate court to modify trial court judgment and affirm as modified); *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992); *Rhoten v. State*, 299 S.W.3d 349, 356 (Tex. App.—Texarkana 2009, no pet.). “Our authority to reform incorrect judgments is not dependent on the request of any party, nor does it turn on a question of whether a party has or has not objected in trial court; we may act sua sponte and may have a duty to do so.” *Rhoten*, 299 S.W.3d at 356 (citing *Asberry v. State*, 813 S.W.2d 526, 531 (Tex. App.—Dallas 1991, pet. ref’d)). Here, Blavier pled “not true” to the State’s allegations that he violated the terms and conditions of his probation. The judgment, however, reflects a plea of “true.” We

therefore modify the judgment to reflect that Blavier pled “not true” to the revocation allegations.

We affirm the judgment of the trial court as modified.

Jack Carter
Justice

Date Submitted: December 9, 2011
Date Decided: December 15, 2011

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