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

No. 06-11-00152-CR

TY JORDAN EVANS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 402nd Judicial District Court
Wood County, Texas
Trial Court No. 21,066-2010

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

MEMORANDUM OPINION

In spite of the trial court's certification that Ty Jordan Evans has no right to appeal, Evans attempts to appeal a special condition of his community supervision—a condition that he have no contact with his brother, Demarcus Hearn, except in specified situations. Because no appealable order is found in this record, we dismiss Evans' appeal.

Pursuant to a plea agreement, Evans entered a plea of "guilty" to the charge of murder and was placed on deferred adjudication community supervision for a period of ten years. Evans allegedly objected[1] to a special condition of his community supervision proscribing any contact with Hearn.[2] The following day, the Wood County District Attorney filed a motion to modify the condition, and the trial court, after a hearing, entered a modified order prohibiting contact with Hearn except in specified situations. Evans filed a notice of appeal.[3] Because Evans was placed

[1]We do not have the record of the hearing before us.

[2]The special condition provided that Evans "shall have no contact with his co-defendant, Damarcus Hearn[,] at any time while on probation."

[3]Evans' notice of appeal states that it is filed "pursuant to Tex. Rule of Appellate Procedure 25.2 of Defendant's objection at sentencing on July 11, 2011 to the special condition of his probation that he may not have contact with Hearn, except as previously approved by the court." The modified condition provides:

> 30. Defendant's contact with the co-defendant shall be limited to his mother's residence only. Defendant shall be allowed to have contact with co-defendant at his mother's residence with no one else present in the residence except his mother, immediate family, and Maliakaia Bunbery. This contact shall be limited to Saturdays and Sundays between 1:00 PM and 6:00 PM and on the holidays of Christmas, Easter, Thanksgiving, Mother's Day, Father's Day, and on the defendant, co-defendant, or defendant's mother's birthday. Defendant shall keep his community supervision officer informed of his mother's current address at all times. Defendant shall advise his community supervision officer when such contact is to take place.

on community supervision, under a plea agreement, the trial court entered an order denying permission to appeal.

This Court asked Evans to explain how we might have jurisdiction over this appeal. In response, Evans claims that, because he objected to the trial court's imposition of a special condition of community supervision at the initial plea hearing—when the condition was imposed—he has preserved his right to appeal that special condition.[4]

Evans relies on *Speth v. State*, 6 S.W.3d 530 (Tex. Crim. App. 1999), to support his claim that he can appeal the reasonableness of the special condition imposed by the trial court. *Speth* held that a defendant who did not object to conditions of community supervision at trial affirmatively accepted them and could not complain about them for the first time on appeal. *Id.* at 534–35. By implication, this language from *Speth* seems to allow appeal from a probationary condition if it is objected to in a timely fashion:

> A trial objection allows the trial court the opportunity to either risk abusing his discretion by imposing the condition over objection or reconsider the desirability of the contract without the objectionable condition.

Id. Even assuming Evans objected to the special condition at the time of its imposition, such objection would not give Evans the right to appeal from the terms of community supervision contained in a judgment resulting from a plea agreement. Rule 25.2 of the Texas Rules of Civil

[4]Evans implies that he likewise timely complained of the modification order. In the absence of a record, we are unable to determine what objections were made, if any. Because we find that, even the claimed objections would not grant this Court jurisdiction over this appeal, we may decide the question of our jurisdiction in the absence of a record.

Procedure provides, in part:

> In a plea bargain case—that is, a case in which a defendant's plea was guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant—a defendant may appeal only:
>
> (A) those matters that were raised by written motion filed and ruled on before trial,[5] or
>
> (B) after getting the trial court's permission to appeal.

TEX. R. APP. P. 25.2(a)(2)(A), (B). "An award of community supervision is not a right, but a contractual privilege, and conditions thereof are terms of the contract entered into between the trial court and the defendant." *Speth*, 6 S.W.3d at 534. Further, while the terms of community supervision are part of the judgment, they are not part of the sentence. *Id.* at 532. Because the terms of community supervision are contractual in nature and are not part of a criminal sentence, they cannot be classified as "punishment" as that term is used in Rule 25.2 of the Texas Rules of Appellate Procedure. Thus, Evans cannot claim that the special community supervision condition was "punishment" to which he did not agree. Therefore, the trial court correctly determined that Evans had no right of appeal.

To the extent Evans bases his appeal on the order modifying the terms of community supervision to soften the no-contact order, this argument must also fail. There is no legislative

[5]There is no indication or claim that, before trial, Evans filed any written motion or obtained any ruling on his objection to the condition made the subject of this attempted appeal. *See Damron v. State*, No. 2-08-399-CR, 2010 WL 1006392, at *2–3 (Tex. App.—Fort Worth Mar. 18, 2010, no pet.) (mem. op., not designated for publication) (right to appeal exists in plea-agreement case, when written motion filed and ruled on pretrial).

authority for entertaining a direct appeal from an order modifying the conditions of community supervision. *See Davis v. State*, 195 S.W.3d 708, 710 (Tex. Crim. App. 2006); *Basaldua v. State*, 558 S.W.2d 2, 5 (Tex. Crim. App. 1977). This Court lacks jurisdiction over Evans' direct appeal from the order modifying the conditions of his community supervision. *See Davis*, 195 S.W.3d at 710.[6]

Since there is no appealable order in the record, we dismiss this appeal for want of jurisdiction.

Josh R. Morriss, III
Chief Justice

Date Submitted: November 21, 2011
Date Decided: November 22, 2011

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[6]A complaint about a modification can be raised in an appeal from a revocation if the validity of the revocation depends on the validity of the modification. *Davis*, 195 S.W.3d at 711.