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

No. 06-16-00025-CR

CRYSTAL DAWN PARKER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 71st District Court
Harrison County, Texas
Trial Court No. 15-0034X

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

MEMORANDUM OPINION

On June 22, 2015, Crystal Dawn Parker, an indigent person, was adjudged guilty of possession of a controlled substance, methamphetamine, in an amount of less than one gram[1] and was placed on community supervision for four years. Among the conditions of Parker's community supervision were not using any controlled substance (Condition 2), reporting regularly to her community supervision officer (Condition 4), and performing at least sixteen hours per week of community service until she had logged 200 hours (Condition 11). On the State's motion to revoke and after a hearing, the trial court found that Parker had violated the above three conditions, revoked her community supervision, and sentenced her to eighteen months in state jail, with credit for time served and with a finding that drugs and alcohol contributed to the revocation. The trial court's judgment of revocation also assessed $1,590.00 in attorney fees against Parker, an amount that was composed of $650.00 originally assessed in the 2015 judgment and $940.00 newly assessed for the revocation proceeding.

We modify the judgment to remove the new attorney-fee assessment and affirm the modified judgment, because we find no other meritorious ground for Parker's appeal.

Parker's attorney on appeal has filed a brief which discusses the record and reviews the proceedings in detail. The brief sets out the procedural history and summarizes the evidence elicited during the course of the proceedings. Counsel also addresses, point by point, why he concludes that Parker has no meritorious point of error on appeal. Meeting the requirements of

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

Anders v. California, counsel has provided a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *Anders v. California*, 386 U.S. 738, 743–44 (1967); *In re Schulman*, 252 S.W.3d 403, 406 (Tex. Crim. App. 2008) (orig. proceeding); *Stafford v. State*, 813 S.W.2d 503, 509–10 (Tex. Crim. App. 1991); *High v. State*, 573 S.W.2d 807, 812–13 (Tex. Crim. App. [Panel Op.] 1978).

Counsel mailed a copy of the brief to Parker, informing Parker of her right to file a pro se response and of her right to review the record. Counsel also filed a motion with this Court seeking to withdraw as counsel in this appeal. Parker filed a pro se response, which we address below.

Appointed counsel specifically addressed four points, each of which he concluded was not meritorious. We agree.

Counsel addresses and concludes that the State's application to revoke Parker's community supervision is not fundamentally defective. We agree, because it gives Parker notice of the grounds the State relied on for revocation, the noted three of which the trial court found to be true. *See Labelle v. State*, 720 S.W.2d 101, 104 (Tex. Crim. App. 1986); *Zillender v. State*, 557 S.W.2d 515 (Tex. Crim. App. 1977). We also agree with counsel's other point that the application was timely filed in that it was filed within the period of Parker's community supervision. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, §§ 5(a)-(c), 21(e), 22 (West Supp. 2015).

Counsel also addresses and concludes that sufficient evidence supports the trial court's findings that Parker violated the terms of her community supervision. In related arguments, Parker, in her pro se brief, asserts that a significant error was made on a drug-test report listing

Parker's gender as male, thus raising crucial questions about that report. She also claims that her failure to report in October 2015 was explained by her supervising officer's actions and verbal directives to her concerning when and where to report. Those two pro se arguments go to the sufficiency of the evidence to support the revocation.

In its decision to revoke community supervision, the trial court has broad discretion; therefore, the normal standards for reviewing the evidence do not apply. *Miles v. State*, 343 S.W.3d 908, 913 (Tex. App.—Fort Worth 2011, no pet.) (evidentiary sufficiency challenges on appeal do not apply to decision to revoke community supervision); *Pierce v. State*, 113 S.W.3d 431, 436 (Tex. App.—Texarkana 2003, pet. ref'd). A revocation of 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.). To revoke community supervision, every element of at least one ground for revocation must be established by a preponderance of the evidence. *T.R.S.*, 115 S.W.3d at 321. If the greater weight of the credible evidence supports a reasonable belief that a condition of community supervision has been violated, there is no abuse of discretion in the decision to revoke. *Rickels*, 202 S.W.3d at 763–64; *T.R.S.*, 115 S.W.3d at 320–21.

Here, the record contains credible evidence that Parker violated each of the three conditions found by the trial court to have been violated. There was no abuse of discretion in the decision to revoke.

Counsel addresses, and concludes that Parker received, effective assistance of counsel. Parker, in her pro se brief, asserts that her trial counsel was ineffective, claiming that she would not have pled true to use of methamphetamine had her trial counsel advised her that the State did not bring to the hearing any expert to testify in support of any drug-testing evidence.

There is a presumption that trial counsel provided reasonable professional assistance; to overcome that presumption, the record must clearly demonstrate that counsel was ineffective. Here, the record does not demonstrate that counsel failed to advise Parker against pleading true to the use of methamphetamine or that, had she refused to so plead, the State could not have produced an expert on drug testing. Even if that point were to have any validity in the record, there is no indication in this record that the other grounds for revocation were suspect. For example, the State's testimony concerning Parker's failure to perform community service as ordered was uncontradicted and was without attempted explanation as to at least two months of that failure.

There is no arguable ground that Parker's trial counsel was ineffective.

While it is not addressed by either Parker or her appellate counsel, we note that the judgment of revocation assessed $1,590.00 in attorney fees against Parker, who had already been judicially determined to be indigent. The parties agree that this assessed amount includes $650.00 originally assessed in the underlying judgment, which is not before us in this appeal,[2] and $940.00 newly assessed for the revocation proceeding. In other words, only the $940.00 is newly assessed in the judgment before us in this appeal. A trial court may order the reimbursement of court-

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[2]By not appealing, by direct appeal, the original assessment of $650.00 in attorney fees, Parker forfeited that claim; it cannot be urged now. *See Wiley v. State*, 410 S.W.3d 313, 320 (Tex. Crim. App. 2013).

appointed attorney fees only if the court "determines that a defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant." TEX. CODE CRIM. PROC. ANN. art. 26.05(g) (West Supp. 2015). Parker's financial resources and ability to pay, if any, are central to the trial court's determination of whether to order reimbursement of legal fees. *See Armstrong v. State*, 340 S.W.3d 759, 765–66 (Tex. Crim. App. 2011). Since this record contains no finding that Parker can pay attorney fees, assessing them was erroneous. *See Cates v. State*, 402 S.W.3d 250, 252 (Tex. Crim. App. 2013); *see also Mayer v. State*, 309 S.W.3d 552 (Tex. Crim. App. 2010).

We are authorized, in this situation, to modify the judgment and affirm it, as modified. *See Ferguson v. State*, 435 S.W.3d 291, 294 (Tex. App.—Waco 2014, pet. struck). Therefore, we modify the trial court's judgment by deleting therefrom the assessment of $940.00 in attorney fees.

Except as to the assessment of attorney fees for the revocation, which we address by modification of the judgment, we have determined that this appeal is wholly frivolous. We have independently reviewed the clerk's record and the reporter's record, and we agree that no arguable issues support a reversal or any further modification. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005).

As modified to strike the newly assessed $940.00 in attorney fees, the trial court's judgment of revocation is affirmed. *See Anders*, 386 U.S. 738.[3]

Josh R. Morriss, III
Chief Justice

Date Submitted: July 18, 2016
Date Decided: July 20, 2016

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[3]Since we agree this case presents no reversible error, we also, in accordance with *Anders*, grant counsel's request to withdraw from further representation of appellant in this case. *Anders*, 386 U.S. at 744. No substitute counsel will be appointed. Should appellant desire to seek further review of this case by the Texas Court of Criminal Appeals, she must either retain an attorney to file a petition for discretionary review (1) must be filed within thirty days from either the date of this opinion or the date on which the last timely motion for rehearing was overruled by this Court, *see* TEX. R. APP. P. 68.2, (2) must be filed with the clerk of the Texas Court of Criminal Appeals, *see* TEX. R. APP. P. 68.3, and (3) should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure, *see* TEX. R. APP. P. 68.4.