TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00669-CR

Phillip Beaty, Appellant

v.

The State of Texas, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 299TH JUDICIAL DISTRICT
NO. D-1-DC-14-201637, HONORABLE KAREN SAGE, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

Phillip Beaty pleaded guilty to attempted burglary of a habitation. *See* Tex. Penal Code §§ 15.01(d), 30.02(c)(2). The trial court found Beaty guilty, sentenced him to five years in prison, suspended his sentence, and placed Beaty on community supervision for five years. The State later filed a motion to revoke Beaty's community supervision. Following a hearing, the trial court granted the motion, revoked Beaty's community supervision, and sentenced him to five years in prison. In four appellate issues, Beaty contends that the trial court abused its discretion in revoking his community supervision. In two additional issues, Beaty contends that this Court should reform the judgment because it incorrectly states that he pleaded "true" to the allegations made in the State's revocation motion and because the State presented no evidence to support the trial court's finding that Beaty violated the terms of his community supervision by failing to pay a $20.00 fee. We will modify the trial court's judgment and affirm as modified.

DISCUSSION

In its motion to revoke Beaty's community supervision, the State alleged that Beaty failed to pay a $20.00 drug-testing fee and that he committed the offense of aggravated assault with a deadly weapon while on community supervision. At the hearing on the motion, the following exchange occurred:

> [The Court:] Yesterday . . . we finished a jury trial. We completed a jury trial. At that time, a jury found the defendant guilty of aggravated assault, deadly weapon, a second-degree felony. The Court was present and heard the evidence during that trial, as well. And based on the jury's verdict and my own independent observation of the testimony presented during that trial, I will find that the allegation that the defendant did commit the subsequent offense of aggravated assault with a deadly weapon, I will find that true. I find that the evidence supports that.
>
> And then the question is, the jury on September 1st, 2016 sentenced the defendant to 20 years for the aggravated assault deadly weapon, and the only question is, going forward today, what I am going to sentence the defendant with—to on the revocation. The defendant was probated for five years—for a TDC term of five years. Does either side have anything to say before I pronounce punishment on the revocation?
>
> [Prosecutor:] No, Your Honor.
>
> [Beaty's Counsel:] Just that there's discussion that Mr. Beaty is not entitled to a separate hearing, that you've decided that a separate hearing is not required and it's not necessary and that you've gone forward just on your own decision.
>
> [The Court:] Right. I mean, I was here for all of the presentation of the evidence. The burden for the motion to revoke is substantially less than the burden that the State had with respect to the jury trial. So I do find that the evidence supports the motion by a preponderance of the evidence. All right. Then I will sentence the defendant to five years.

In his first three appellate issues, Beaty contends that the trial court abused its discretion in revoking his community supervision because the court did not allow him to be heard

or present witnesses, evidence, or argument before finding the State's allegations "true" and sentencing him to five years in prison. The State argues that Beaty failed to preserve these complaints because he did not raise them in the trial court. We agree with the State that Beaty has failed to preserve these issues.

When the trial court announced that it was finding the State's allegation that Beaty violated the terms of his community supervision by committing the offense of aggravated assault to be true, Beaty's counsel did not object. Later, when the trial court asked, "Does either side have anything to say before I pronounce punishment on the revocation?", Beaty's attorney responded, "Just that there's discussion that Mr. Beaty is not entitled to a separate hearing, that you've decided that a separate hearing is not required and it's not necessary and that you've gone forward just on your own decision." We conclude that this statement was not an objection that "stated the grounds for the ruling that [Beaty] sought from the trial court with sufficient specificity to make the trial court aware of the complaint." *See* Tex. R. App. P. 33.1(a)(1)(A). Moreover, Beaty's attorney never offered to present testimony, other evidence, or argument. Because there was no such offer, the trial court never had an opportunity to decide whether to grant such a request. Therefore, Beaty cannot complain on appeal that he was not allowed to present his case. *See Yazdchi v. State*, 428 S.W.3d 831, 844 (Tex. Crim. App. 2014) ("For a party to preserve a complaint for appellate review . . . the point of error on appeal must comport with the objection made at trial."). "Failure to object at trial may waive even constitutional errors." *Id.*; *see Aekins v. State*, No. 03-16-00598-CR, 2017 WL 2333213, at *9 (Tex. App.—Austin May 25, 2017, no pet. h.) (mem. op., not designated for publication) (noting that constitutional errors may be waived). Accordingly, we overrule Beaty's first three issues.

In his fourth issue, Beaty contends that the trial court abused its discretion in revoking his community supervision because "the court did not act as a neutral and detached hearing body." According to Beaty, "the record reflects that the trial court decided to revoke [his] community supervision without hearing evidence, testimony, or argument from the parties," and "[t]his suggests that the trial court made its decision to revoke [Beaty's] community supervision prior to the hearing." We disagree with Beaty's characterization of the record. As discussed above, we conclude that Beaty never objected in a sufficiently clear way to the trial court's decision to take judicial notice of the aggravated-assault proceedings, and Beaty never asked to present any evidence or argument. Because the trial court was not presented with a clear objection on which to rule, we cannot conclude that its decision to move forward and sentence Beaty demonstrated bias. Moreover, judicial rulings alone almost never constitute a valid basis for showing the trial court's bias or impartiality. *See Liteky v. United States*, 510 U.S. 540, 555 (1994); *Spears v. Falcon Pointe Cmty. Homeowner's Ass'n*, No. 03-14-00650-CV, 2016 WL 1756486, at *6 (Tex. App.—Austin Apr. 28, 2016, no pet.) (mem. op.); *Thomas v. Graham Mortg. Corp.*, 408 S.W.3d 581, 595 (Tex. App.—Austin 2013, pet. denied). Accordingly, we overrule Beaty's fourth issue.

In his fifth issue, Beaty contends that we should modify the trial court's judgment because the judgment incorrectly indicates that Beaty entered a plea of "true" to the allegations made in the State's motion to revoke his community supervision. According to Beaty, "The reporter's record in this cause indicates that [Beaty] never entered a plea of 'true' or 'not true' to the allegations contained in the State's motion" and the judgment should indicate "No Plea Entered." We agree that nothing in the reporter's record indicates that Beaty was asked to enter a plea as to the State's allegations, and the State does not assert on appeal that Beaty ever entered a plea as to the revocation

allegations. This Court has authority to modify incorrect judgments when the necessary information is available to do so. *See* Tex. R. App. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993). Accordingly, we sustain Beaty's fifth issue and will modify the judgment to indicate that Beaty did not enter a plea as to the revocation allegations.

In his sixth issue, Beaty contends that we should modify the judgment because the judgment indicates not only that Beaty committed a subsequent offense but also that he failed to pay a $20.00 drug-testing fee. Beaty correctly points out that the record contains no evidence that he failed to pay such a fee. Accordingly, we sustain Beaty's sixth issue and will modify the judgment to eliminate the finding that Beaty failed to pay the $20.00 fee.

CONCLUSION

Having sustained Beaty's fifth and sixth issues and overruled his remaining issues, we modify the trial court's judgment revoking Beaty's community supervision by removing any indication that Beaty entered a plea as to the revocation allegations or that he failed to pay the $20.00 drug-testing fee. We affirm the judgment as modified.

Scott K. Field, Justice

Before Justices Puryear, Field, and Bourland

Modified and, as Modified, Affirmed

Filed: July 7, 2017

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