



NUMBERS 13-16-00584-CR & 13-16-00585-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

SIMON HERNANDEZ III,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 24th District Court
of DeWitt County, Texas.**

MEMORANDUM OPINION

**Before Justices Rodriguez, Contreras, and Benavides
Memorandum Opinion by Justice Benavides**

By one issue, appellant Simon Hernandez III, challenges his conviction for two cases both involving the manufacturing and/or delivery of a controlled substance, penalty group 1: to wit-cocaine, within a drug-free zone. See TEX. HEALTH & SAFETY CODE ANN. §§ 481.112, 481.134(b) (West, Westlaw through Ch. 49 2017 R.S.). One case was a first-degree felony and the second case was a third-degree felony based on the amount

of drugs and drug-free zone enhancement. See *id.* Hernandez argues that the trial court erred in finding all of the financial allegations were true because the State failed to prove he was not indigent. We affirm.

I. BACKGROUND

Hernandez pleaded guilty to two counts of manufacturing and/or delivery of a controlled substance on September 20, 2012.¹ See *id.* In exchange for his plea of guilty, Hernandez was sentenced to ten years deferred adjudication probation on his first-degree felony charge and ten years confinement, probated for ten years on his third-degree felony charge. In addition, Hernandez was sentenced to a \$1,000.00 fine on each case, 200 community service hours, and confinement in a substance abuse felony punishment facility (SAFPF) as a condition of his probation.

The State filed both a motion to adjudicate trial court cause number 12-05-11, 665A and a motion to revoke Hernandez's probation in trial court cause number 12-07-11, 712A in July 2013, based on Hernandez's dismissal from SAFPF for non-compliance. However, in October 2013, after a court-ordered competency evaluation, Hernandez was found to be incompetent and was committed to a state psychiatric facility in an attempt for him to regain his competency. In May 2014, Hernandez was found to be competent to stand trial. The State dismissed its first motion for adjudication and revocation in August 2014.

¹ Appellate cause number 13-16-00584-CR relates to cause 12-05-11,665A, the first-degree felony offense. Appellate cause number 13-16-00585-CR relates to cause 12-07-11,712A, the third-degree felony offense.

In April 2016, Hernandez's probation terms were amended, and he was ordered to be placed in an intermediate sanctions facility (ISF) to deal with his mental health issues. In August 2016, the State filed a second motion to adjudicate and to revoke Hernandez's community supervision. In the motion for trial court cause number 12-05-11, 665A, the State alleged that Hernandez (1) was found with no driver's license in violation of state laws; (2) admitted to drug and alcohol use; (3) failed to report to the probation office; (4) was removed from ISF due to non-compliance; and (5) failed to pay his court costs and restitution. In the motion for trial court cause number 12-07-11, 712A, the State alleged that Hernandez (1) was found with no driver's license; (2) admitted to drug and alcohol use; (3) failed to report to the probation office; (4) broke his court-ordered curfew; (5) failed to pay supervisory fees, court costs, and restitution; (6) failed to complete any of his community service hours; and (7) was removed from ISF due to non-compliance.

At a hearing before the trial court, Hernandez's probation officer, Leslie Vavra, testified. Vavra stated that Hernandez had been caught speeding without a driver's license in violation of Texas laws. She also stated that Hernandez had admitted to her that he had used drugs and alcohol in March 2016. Additionally, Hernandez did not report to the probation office two times and was arrested in a location other than his house after curfew hours. Vavra testified that Hernandez was behind on his payments to the probation office, although he had made some payments in the past. She stated that Hernandez had not completed community service hours and had been discharged from ISF because he refused to comply with facility's orders. Following the testimony, the trial court sentenced Hernandez to ten years in the Texas Department of Criminal

Justice–Institutional Division on both charges and ordered the sentences to run concurrently. This appeal followed.

II. TRIAL COURT COMMITTED NO ERROR

By his sole issue, Hernandez alleges the trial court committed error by finding that all the financial allegations against him were true. Hernandez argues the State did not prove he was not indigent and he had the ability to pay.

A. Standard of Review and Applicable Law

We review the trial court’s order revoking community supervision for an abuse of discretion. *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013). A trial court may revoke community supervision if the State proves by a preponderance of the evidence that the defendant violated a condition of community supervision as alleged in the motion to revoke. *Rickels v. State*, 202 S.W.3d 759, 764 (Tex. Crim. App. 2006).

A finding of a single violation of community supervision is sufficient to support revocation. *Smith v. State*, 286 S.W.3d 333, 342 (Tex. Crim. App. 2009) (“We have long held that one sufficient ground for revocation would support the trial court’s order revoking’ community supervision.”); *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980); *Jones v. State*, 571 S.W.2d 191, 193–94 (Tex. Crim. App. [Panel Op.] 1978). Additionally, a defendant’s plea of true standing alone is sufficient to support a trial court’s decision to revoke community supervision. *Cole v. State*, 578 S.W.2d 127, 128 (Tex. Crim. App. 1979); *Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. [Panel Op.] 1979).

B. Discussion

As covered by article 42.12, section 21(c),

in a community supervision revocation hearing at which it is alleged only that the defendant violated the conditions of community supervision by failing to pay compensation paid to appointed counsel, community supervision fees, or court costs, the state must prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge.

TEX. CODE CRIM. PROC. ANN. art. 42.12, § 21(c) (West, Westlaw through Ch. 49 2017 R.S.).

Here, the financial offenses were just one of many allegations regarding Hernandez's failure to comply with the terms of probation. Hernandez does not argue that the State failed to prove any of the other allegations alleged in its motions to adjudicate and revoke probation. Additionally, Hernandez did not object during the revocation hearing to the State's lack of proof regarding his ability to pay certain court-ordered fees. See *Gipson v. State*, 428 S.W.3d 107, 108–09 (Tex. Crim. App. 2014) (holding that specific types of fees and costs not covered by the statute were not intended by the Legislature to be proved by the State); see also *Obella v. State*, No. PD-1032-16, ___ S.W.3d ___, ___, 2017 WL 510568, *2 (Tex. Crim. App. Feb. 8, 2017) (“An appellate court may not reverse a judgment of conviction without first addressing any issue of error preservation.”).

Therefore, based on the allegations presented by the State, even disregarding the supervisory fees and court costs, we find there was sufficient evidence to support the trial court's adjudication of guilt and revocation of probation. We overrule Hernandez's sole issue.

II. CONCLUSION

We affirm the trial court's judgments.

GINA M. BENAVIDES,
Justice

Do not publish.
TEX. R. APP. P. 47.2 (b).

Delivered and filed the
6th day of July, 2017.