



**NUMBER 13-17-00470-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**IN RE ABRAHAM QUINTANILLA III**

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**On Petition for Writ of Habeas Corpus.**

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**MEMORANDUM OPINION**

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

Relator Abraham Quintanilla III filed a petition for writ of habeas corpus arguing that the trial court erred by revoking his community supervision and ordering him committed to the county jail for his failure to timely pay court-ordered child support. We will conclude that the commitment order is void because it was not supported by evidence establishing that relator violated the terms of community supervision. Accordingly, we will grant the petition as stated herein.

## I. BACKGROUND

In 2000, relator was ordered to pay monthly child support to Summer Clary Salman for their child, who was born in 1999. In February 2012, the trial court rendered an agreed order finding relator in contempt for failure to timely make the child support payments and stating that relator was \$51,000 in arrears as of December 1, 2011. The agreed order committed relator to the county jail for 180 days, but stated that relator may purge his contempt by timely remittance of the current and past support payments. On August 8, 2012, the trial court rendered an order finding relator \$43,570 in arrears as of June 30, 2012. The order suspended the prior 180-day commitment and imposed community supervision for 120 months. See TEX. FAM. CODE ANN. §§ 157.211–.217 (West, Westlaw through 2017 R.S.). The terms and conditions of community supervision included a requirement that relator pay current and past child support as ordered.

On March 21, 2017, Salman filed a motion to revoke alleging that relator violated the terms of his community supervision. A warrant for relator's arrest was issued on May 9, 2017. Later, the OAG intervened in the case and alleged that relator was \$87,587.48 in arrears as of July 11, 2017. Relator's counsel filed a notice of appearance on July 27, 2017, stating that relator had not been served with any pleading and requesting that the court recall or vacate the arrest warrant. At a hearing on August 4, 2017, relator did not appear personally but was represented by counsel. The trial court declined to recall or vacate the arrest warrant and orally instructed the parties to re-appear on August 16, 2017.

During the August 16, 2017 hearing, at which relator appeared personally, relator, Salman, and the OAG announced that they had reached a settlement under which relator

agreed to pay the full amount of child support owed, excluding interest accruing since August 1, 2017, as well as attorney's fees and the child's unpaid medical expenses. The trial court indicated that it would accept the agreement but nevertheless found that relator had violated the terms of his community supervision and ordered him immediately committed to the county jail. The trial court's written order states that relator was committed to the county jail "for 180 days, or as further ordered by this Court."

This original proceeding followed. See TEX. GOV'T CODE ANN. § 22.221(d) (West, Westlaw through 2017 R.S.) (providing that a court of appeals has concurrent jurisdiction with the Texas Supreme Court to issue writs of habeas corpus in cases where a relator's liberty is restrained "by virtue of an order, process, or commitment issued by a court or judge because of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge in a civil case").

## **II. DISCUSSION**

### **A. Habeas Corpus**

The purpose of a habeas corpus proceeding is not to determine the ultimate guilt or innocence of the relator, but only to ascertain whether the relator has been unlawfully confined. *Ex parte Gordon*, 584 S.W.2d 686, 688 (Tex. 1979); *In re Mann*, 162 S.W.3d 429, 432 (Tex. App.—Fort Worth 2005, orig. proceeding). A writ of habeas corpus will be issued if the order underlying the contempt order is void or if the contempt order itself is void. See *Ex parte Shaffer*, 649 S.W.2d 300, 302 (Tex. 1983) (orig. proceeding). In a habeas corpus proceeding, the order or judgment being challenged is presumed to be valid. *In re R.E.D.*, 278 S.W.3d 850, 855 (Tex. App.—Houston [1st Dist.] 2009, orig. proceeding); *In re Turner*, 177 S.W.3d 284, 288 (Tex. App.—Houston [1st Dist.] 2005,

orig. proceeding). To obtain relief by habeas corpus, the relator must establish that the underlying order is void because of a lack of jurisdiction or because the relator was deprived of liberty without due process of law. *In re Henry*, 154 S.W.3d 594, 596 (Tex. 2005) (orig. proceeding) (per curiam); *Ex parte Merrikh*, 361 S.W.3d 209, 210 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding) (per curiam); *In re Turner*, 177 S.W.3d at 288; *In re Butler*, 45 S.W.3d 268, 270 (Tex. App.—Houston [1st Dist.] 2001, orig. proceeding). The relator bears the burden of showing that he is entitled to relief. *In re Munks*, 263 S.W.3d 270, 272–73 (Tex. App.—Houston [1st Dist.] 2007, orig. proceeding); *In re Turner*, 177 S.W.3d at 288.

A judgment of contempt without support in the evidence is void. *Ex parte Davila*, 718 S.W.2d 281, 282 (Tex. 1986); *Ex parte Williams*, 690 S.W.2d 243, 244 (Tex. 1985); *Ex parte Green*, 603 S.W.2d 216 (Tex. 1980).

## **B. Analysis**

In his petition, relator argues that the commitment order is void because: (1) he was not personally served with the motion to revoke; (2) he was not fairly notified that the motion to revoke would be heard at the August 16, 2017 hearing; (3) there was no evidence offered at the hearing to support revocation; and (4) the order impermissibly allows a period of confinement longer than the original sentence of 180 days. Relator states in his petition that Salman is unopposed to the issuance of the writ. We requested responses from Salman, the OAG, and any other party whose interest would be directly affected by the relief sought. The OAG filed a response stating that it is unopposed to relator's petition.

We agree with relator that the commitment order is void because there is no

evidence in the record that relator violated the terms of his community supervision. According to the trial court record as provided by relator, the only evidence adduced at the August 16, 2017 hearing was brief testimony by Salman confirming that she had reached a settlement agreement with relator.<sup>1</sup> There was no testimony or other evidence establishing that relator violated the terms of his community supervision as previously ordered. Considering the parties' positions and the entire record, we conclude that the commitment order is void because it was not supported by evidence. See *Davila*, 718 S.W.2d at 282; *Williams*, 690 S.W.2d at 244; *Green*, 603 S.W.2d at 216. In light of our conclusion, we do not address relator's other arguments contending that the commitment order was void. See TEX. R. APP. P. 47.1; 52.8(d).

### III. CONCLUSION

This Court, having examined and fully considered the petition for writ of habeas corpus and the response thereto, is of the opinion that relator has met his burden to obtain relief. We therefore GRANT relator's petition for writ of habeas corpus and ORDER

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<sup>1</sup> The testimony offered at the hearing consisted entirely of the following:

THE COURT: This case has been going on quite a long time in this court. I do understand that your son . . . is 18 years old; is that correct?

THE PETITIONER: Yes, ma'am.

THE COURT: What I am understanding through your attorney and through [relator's attorney] is that you are requesting this to be a full settlement of the amount owed; is that correct?

THE PETITIONER: That's correct.

THE COURT: You are in agreement with this offer by Mr. Quintanilla?

THE PETITIONER: Yes, ma'am.

THE COURT: Anything else you would like to say to me?

THE PETITIONER: Not at this time.

THE COURT: Have a seat.

relator released and discharged from the custody of the Sheriff of Nueces County, Texas.

See TEX. R. APP. P. 52.8(c).

DORI CONTRERAS  
Justice

Delivered and filed the  
29th day of August, 2017.