# NUMBER 13-18-00692-CR

# COURT OF APPEALS

# THIRTEENTH DISTRICT OF TEXAS

# CORPUS CHRISTI – EDINBURG

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**ALEJANDRO MEJIA, Appellant,**

**v.**

**THE STATE OF TEXAS, Appellee.**

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**On appeal from the 105th District Court of Kleberg County, Texas.**

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# MEMORANDUM OPINION

**Before Justices Benavides, Perkes, and Tijerina**
**Memorandum Opinion by Justice Benavides**

Appellant Alejandro Mejia appeals the revocation of his community supervision and sentence imposed by the trial court. By one issue, Mejia argues that the trial court's revocation due to a violation of a "zero-tolerance" policy deprived him of his due process rights, and the trial court should have instead considered alternative punishment options. We affirm.

## I. BACKGROUND

On June 20, 2017, Mejia pleaded guilty to one count of assault family violence, a second offense, a third-degree felony. *See* TEX. PENAL CODE ANN. § 22.01(B). Mejia was sentenced to four years' deferred adjudication community supervision, the terms of which included, among others, completion of the Batterers' Intervention Prevention Program (BIP), and no contact with the complaining witness, Ashley Shelly.

In August 2018, the State filed its first motion to adjudicate guilt. The State alleged that Mejia failed to pay his community supervision fees and complete the BIP. After Mejia entered a plea of true to some of the violations, the trial court found the allegations true, continued Mejia on community supervision and ordered the following additional terms and sanctions: (1) 180 days' confinement in the Kleberg County Jail, (2) participation in an anger management program, and (3) a zero-tolerance policy for the remainder of Mejia's community supervision term.

In October 2018, the State filed its second motion to adjudicate guilt. In the second motion, the State alleged that Mejia: (1) committed new offenses; and (2) failed to abide by the zero-tolerance condition. The State filed an amended motion to adjudicate guilt in which it alleged that Mejia: (1) committed the offenses of assault and resisting arrest; (2) failed to abide by the zero-tolerance condition; (3) failed to avoid contact with Shelly; and (2) failed to pay the multiple fees associated with community supervision.

At a hearing in December 2018, the State abandoned the allegation related to the new assault offense and Mejia entered a plea of true to the allegation regarding his failure to pay supervision fees and not true to the other allegations. The witnesses who testified

were Kristin Jamison, Mejia's current supervision officer; Gilbert Rodriguez, a Kingsville Police Department Officer; and Mejia.

Officer Rodriguez testified regarding the encounter with Mejia that led to the assault and resisting arrest charges. He stated that he was dispatched to a home in Kingsville regarding allegations of assault. At the home, he encountered Mejia, who explained he and his roommate were having a dispute. Mejia's roommate told Officer Rodriguez that Mejia had verbally threatened him. Officer Rodriguez took Mejia into custody to "protect the community here in Kingsville." Officer Rodriguez stated that Mejia was "passive-resistant" when Officer Rodriguez attempted to handcuff him, and Mejia kept pushing backwards towards the house, as well as resisting when he was being searched. Mejia told Officer Rodriguez that Shelly was not at his house; however, she was located in the home when officers entered the premises.

Jamison testified regarding Mejia's community supervision allegations. She explained Mejia was given new payment due dates on the State's previous motion to adjudicate, but he did not make his payments. Jamison stated that Mejia had not made any appointments since he was released from jail. She also explained that the zero-tolerance condition was added onto his community supervision, that Mejia was read the conditions and signed off on them, and that the judge verbally told him he was adding the zero-tolerance condition. She agreed with Mejia's counsel that it was possible that Mejia was indigent and that could explain why he was not able to make financial payments towards his community supervision.

Mejia testified that when he was released from custody, he went to find a place to live and money to support himself. Mejia told the court he tried to comply with the conditions associated with community supervision. He explained he could not afford the transportation to Corpus Christi or the BIP classes but was in contact with Shelly because she told him she was "homeless and [did] not have a place to stay." Mejia denied resisting arrest when Officer Rodriguez placed him in custody. Mejia said he had a job lined up in Houston and family that would support him when he moved there. He told the trial court that he had a job when he first got out of jail, but he did not keep it long because the pay was not enough. Mejia agreed that he had lied to officers about the complaining witness being present at his house and he was aware of the zero-tolerance policy as a condition of his community supervision.

The trial court found all of the remaining allegations against Mejia true, adjudicated him guilty, revoked his community supervision, and sentenced him to ten years' imprisonment in the Texas Department of Criminal Justice–Institutional Division. This appeal followed.

## II. STANDARD OF REVIEW

An appellate court reviews a trial court's decision to revoke community supervision for an abuse of discretion. *See Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013); *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). The State bears the burden to prove the defendant violated a term of his community supervision by a preponderance of the evidence. *Hacker*, 389 S.W.3d at 864–65. A preponderance of the evidence is met "when the greater weight of the credible evidence . . . create[s] a

reasonable belief that the defendant has violated a condition of his probation." *Hacker*, 389 S.W.3d at 865 (quoting *Rickels*, 202 S.W.3d at 764); *see also York v. State*, 342 S.W.3d 528, 543 n.86 (Tex. Crim. App. 2011) (reiterating preponderance of the evidence is much lower standard than beyond a reasonable doubt, but much higher than probable cause).

If the trial court finds the State's allegations true, the trial court "has wide discretion to modify, revoke, or continue the [community supervision]." *Smith v. State*, 587 S.W.3d 413, 419 (Tex. App.—San Antonio 2019, no pet.) (quoting *Ex parte Tarver*, 725 S.W.2d 195, 200 (Tex. Crim. App. 1986)); *see also Dansby v. State*, 468 S.W.3d 225, 231 (Tex. App.—Dallas 2015, no pet.). "If the State fails to meet its burden of proof, the trial court abuses its discretion by revoking the community supervision." *Brown v. State*, 354 S.W.3d 518, 519 (Tex. App.—Fort Worth 2011, pet. ref'd) (mem. op.).

"The trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony, and we review the evidence in the light most favorable to the trial [court's] ruling." *Id*. In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the trial court's finding and defer to the trial court as the sole fact finder and judge of the witnesses' credibility. *Jones v. State*, 589 S.W.2d 419, 421 (Tex. Crim. App. 1979); *Torres v. State*, 103 S.W.3d 623, 625 (Tex. App.—San Antonio 2003, no pet.). We remain mindful that proof of a violation of one condition of community supervision is sufficient to support the trial court's decision to revoke. *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012); *accord Trevino v. State*, 218 S.W.3d 234, 240 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

## III. ZERO-TOLERANCE CONDITION

A trial court has the authority to impose any reasonable condition of community supervision that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. *See* TEX. CODE CRIM. PROC ANN. art. 42A.301(a). When community supervision is granted, a contractual relationship is created between the trial court and the defendant. *Speth v. State*, 6 S.W.3d 530, 533 (Tex. Crim. App. 1999). Conditions of community supervision that are not objected to are affirmatively accepted as terms of the contract. *Id.* at 534. A defendant who benefits from the contractual privilege of community supervision, the granting of which does not involve a systemic right or prohibition, must complain at trial to conditions he finds objectionable. *Id.*; *see* TEX. R. APP. P. 33.1(a). To be subject to procedural default under these circumstances, the defendant must be aware of the condition of community supervision in time to object at trial. *See Dansby*, 448 S.W.3d at 447.

"As a prerequisite to presenting a complaint on appeal, a party must have made a timely and specific request, objection, or motion to the trial court." *Grant v. State*, 345 S.W.3d 509, 512 (Tex. App.—Waco 2011, pet. ref'd) (citing TEX. R. APP. P. 33.1(a)(1)(A)). "This rule ensures that trial courts are provided an opportunity to correct their own mistakes at the most convenient and appropriate time—when the mistakes are alleged to have been made." *Hull v. State*, 67 S.W.3d 215, 217 (Tex. Crim. App. 2002); *see also Archer v. State*, No. 13-18-00059-CR, 2019 WL 2221677, at *2 (Tex. App.—Corpus Christi–Edinburg May 23, 2019, no pet.) (mem. op., not designated for publication).

In the present case, at the August 2018 hearing, Mejia agreed to the addition of the zero-tolerance condition, which allowed him to continue on community supervision. *See Little v. State*, 376 S.W.3d 217, 221 (Tex. App.—Fort Worth 2012, pet. ref'd) (finding that appellant forfeited his claim for review as he affirmatively accepted the complained-of condition of his community supervision by not objecting to the condition "until it became apparent that the State was going to seek revocation on the basis of the condition's violation."). Jamison testified that not only did the community supervision department explain the condition, Mejia signed a form affirming he understood and agreed to the addition of the zero-tolerance condition, and the trial court admonished him about the condition during the hearing.[1] Mejia did not object to the inclusion of zero-tolerance conditions at that time. *See Hull*, 67 S.W.3d at 217; *see Rickels v. State*, 108 S.W.3d 900, 902 (Tex. Crim. App. 2003) (finding that appellant could raise an objection to a condition of probation for the first time on appeal where appellant did not have a meaningful opportunity to object to the condition). Because Mejia had the opportunity to object to the application of the zero-tolerance condition at the first revocation hearing and he did not do so, we hold that Mejia waived any complaint on appeal that his due process rights were violation by the trial court's application of the zero-tolerance condition. *See* TEX. R. APP. P. 33.1(a)(1)(A); *Hull*, 67 S.W.3d at 217–18 (holding appellant waived challenge to zero-tolerance condition and corresponding due process argument where he first raised issue on appeal); *Little*, 376 S.W.3d at 221; *Fuller v. State*, 253 S.W.3d 220, 232 (Tex.

[1] The record from the first motion to adjudicate hearing is not part of the record before us. Therefore, we accept Jamison's non-objected to testimony as true during the second motion to adjudicate hearing before us.

Crim. App. 2008 ("[A]lmost all error–even constitutional error–may be forfeited if the appellant failed to object."); *Archer*, 2019 WL 2221677 at *3.

## IV. SUFFICIENCY

Although the State alleged six violations of his community supervision conditions, Mejia pleaded true to one, and the trial court found the additional violations to be true, including Mejia's commission of a new offense.[2] A violation of one condition of probation is sufficient to revoke. *Garcia*, 387 S.W.3d at 26.

The State elicited testimony of Mejia's resisting arrest charge, his violation of the no contact order with Shelly, his failure to pay fees, as well as his violation of the zero-tolerance condition. The trial court is the sole judge of the credibility of the witnesses and found the State had provided sufficient evidence to meet the preponderance of evidence standard. *See Brown*, 354 S.W.3d at 519; *Hacker*, 389 S.W.3d at 864–65.

The trial court did not abuse its discretion by finding the allegations in the motion to revoke true and sentencing Mejia to a term of imprisonment. *See Hacker*, 389 S.W.3d at 864–65. We overrule Mejia's sole issue.

[2] Mejia pleaded true to violation five, which stated he failed to pay $40 in supervision fee arrearages. However, we will not sustain a revocation based solely on a defendant's failure to pay fees, unless that State shows that the defendant had the ability to pay the fees. *See Martinez v. State*, 563 S.W.3d 503, 513–16 (Tex. App.—Corpus Christi–Edinburg 2018, no pet.). Because the State produced evidence of the additional violations that did not solely involve financial obligations, we review those allegations in making our determination.

## V. CONCLUSION

We affirm the judgment of the trial court.

GINA M. BENAVIDES,
Justice

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

Delivered and filed the
28th day of May, 2020.